

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1500

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee.

vs.

FRED R. FIELD, JR.,

Appellant.

*On Appeal from a Judgment of the United States District Court
for the Southern District of New York*

APPENDIX FOR APPELLANT

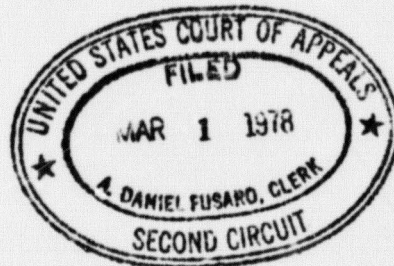
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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

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208 1 0849

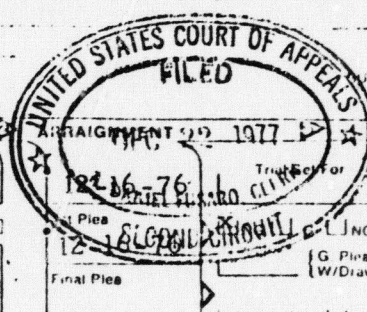
FILIED, FRED R., JR.

12 10 76 117 01

U.S. DEFECTION	OFFENSES CHARGED	ORIGINAL COUNTS	BAIL - RELEASE
18:1962(c)&1961 (1)(C)&(4)(5)	Engaging racketeering activity	1	
29:186(b)	Labor Union Official accepting illegal payments	2-5	
18:371	Consp. to engage in racketeering activity	6	
26:7201	Income Tax evasion	7&9	
26:7206(1)	False statements on income tax returns	8&10	

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	TRIAL	SENTENCE
U.S. Custody Began	High Risk Date 12-10-76	Voir Dire	Position of Charges
Summons Served	Indict Waived	Trial Began	On All Charges
First Appearance	In Charging District 4-20-77	Trial Ended	On Lesser Offense(s)



SEARCHED	INDEXED	DATE	INITIALS	MAGISTRATE
Issued	Return			
Summons	Served			
Arrest	Not Waived			

John R. Wing
791-1995 (AOD)

ATTORNEYS

552

1352

DATE	DOCUMENT NO.	FILED ENTRIES
12-10-76		Filed Indictment..... Motley, J.
12-16-76		Deft. (atty. Lawrence Feitell present) pleads not guilty. Deft. Ordered F/P. Bail fixed at \$10,000 unsecured PRB. Bail limits are continental U.S.A. Deft. ROR to 5 pm today to post bond. Case assigned to Lasker, J. for all purposes.....Griesa, J.
12-16-76		Filed deft's. apperance bond in the sum of \$10,000 unsecured PRB - acknowledged by the Clerk.
12-17-76		Filed Notice of Appearance by Lawrence K. Feitell, 150 E. 58th St., NYC 10022 Pl 3-7500.
1-31-77		Filed Dfts. Notice of Motion & Affdvt. for order dismissing 1st ct. of Indict. & so much of 3rd ct.
1-31-77		Filed Dfts. Memorandum of Law.
2-10-77		Filed Memo. End. on dfts. motion filed 2-3-77. Motions disposed of in accordance with rulings at conference in chambers 2-2-77.....Lasker J. (mn)

POST THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V. ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161.

DATE

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCLUDABLE DELAY

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY
2-3-77	Filed Dfts. notice of motion for bill of particulars & disclosure.	
2-22-77	Filed Govts. Memorandum of Law in opposition to dfts. Fields = Motion to Dismiss the indictment.	
4-8-77	Filed Dfts. Notice of Motion for order quashing Grand Jury Subpoena relating to tax records, etc. & supporting affdvt.	
4-14-77	Filed Memo. End. on motion dtd. 4-8-77. Motion Denied as indicated.Lasker J.	
4-20-77	Filed Superseding Indictment & referred to Lasker, J.Stewart, J.	
4-25-77	Filed Opinion #45826. For the forgoing reasons, the motion to dismiss is denied in all respects.Lasker J. (mn)	10055000X
6-3-77	Filed Govts Bill of Particulars.	
7-6-77	Filed order permitting deft. to leave the jurisdiction of this Court from time to time to travel anywhere in the continental U.S. to travel to England and the Irish Republic.Raby, N.	
8-22-77	Filed Gov't affdvt in response to the deft's motion for disclosure of electronic surveillance information.	
8-22-77	Filed Gov't memo. of law in response to the deft's motion for disclosure of electronic surveillance information.	
8-29-77	Filed Gov't Amended Bill of Particulars	
9-12-77	Filed Government's proposed examination of prospective jurors.	
9-20-77	Filed Gov't Notice of Motion to Sequester Jury	
9-19-77	Filed memo. endorsed on Gov't motion to sequester jury, motion denied.Lasker, J. m/n	
9-19-77	Deft. present with atty. Lawrence Feitell, AUSA John Wing present. Trial begun.Lasker,	
9-20-77	Trial cont'd	
9-21-77	"	
9-23-77	"	
9-26-77	"	
9-27-77	"	
9-28-77	"	
9-29-77	Trial cont'd & concluded. Deft. found guilty on all cts. (cts. 1 through 10 incl.). Present bail arrangement cont'd Sentence set for 11-18-77 at 10:00 a.m.Lasker, J.	
10-27-77	Filed letter dated 10-25-77 from U.S. Atty. Robert B. Fiske, in response to Court's request which appears at pg. #12 of the transcript of proceedings dated 9-14-77.	
11-30-77	Filed Gov't Sentencing Memorandum	
12-1-77	Filed Transcript of record of proceedings, dated 9-29-77	
12-2-77	Filed Transcript of record of proceedings, dated 9-14-77	
12-2-77	Filed Transcript of record of proceedings, dated 9-26, 27, 28, 29-77	
12-5-77	Filed Transcript of record of proceedings, dated 9-19, 20, 21, 23-77	

A TRUE COPY
RAYMOND F. BURCHARDT, CLERK

JRW:dlf

INDICTMENT
(Filed December 10, 1976) (pp. 4a-11a)

4a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA, :
 :
 - v - : INDICTMENT
FRED R. FIELD, JR., : S76 Cr. 1117
 :
 Defendant. :
-----x

The Grand Jury charges:

1. On or about the dates hereinafter set forth, in the Southern District of New York, FRED R. FIELD, JR., the defendant, being a person employed by and associated with enterprises engaged in, and the activities of which affected interstate and foreign commerce, to wit, an association, union and group of individuals known as the International Longshoremen's Association and other associations, unions and groups of individuals related to and affiliated with the International Longshoremen's Association, unlawfully, wilfully, and knowingly did conduct and participate, directly and indirectly, in the conduct of such enterprises' affairs through a pattern of racketeering activity, to wit, acts constituting violations of Title 29, United States Code, Section 186.

2. On or about the dates hereinafter set forth in the Southern District of New York, FRED R. FIELD, JR., the defendant, being an officer and employee of labor organizations, to wit, the International Longshoremen's Association and other

labor organizations related to and affiliated with the International Longshoremen's Association, which represented employees of employers who were employed in an industry affecting commerce, unlawfully, wilfully and knowingly did request, demand, receive and accept payments and deliveries of moneys from employers, to wit, the United Brands Company, the United Fruit Company and subsidiaries of said companies, as hereinafter set forth.

<u>TIME PERIOD</u>	<u>APPROXIMATE NUMBER OF OCCASIONS ON WHICH PAYMENTS WERE MADE</u>	<u>APPROXIMATE TOTAL SUM OF MONEY PAID</u>
In or about September 1971 through December 13, 1971	7	\$48,500.00
In or about September 1968 through March 1969	7	\$41,000.00
In or about October 1974 through November 1974	3	\$35,000.00

(Title 18, United States Code, Sections 1962(c) and 1961(1)(c) and (4)(5).)

COUNTS TWO THROUGH FIVE

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, FRED R. FIELD, JR., the defendant, being then and there an officer and employee of labor organizations, to wit, the International Longshoremen's Association and other labor organizations related to and affiliated with the International Longshoremen's Association, which represented employees of employers who were employed in industries affecting commerce, unlawfully, wilfully, and knowingly did request, demand, receive and accept payments and deliveries of money from employers, to wit, the United Brands Company, the United Fruit Company and subsidiaries of said companies.

<u>COUNT</u>	<u>APPROXIMATE AMOUNT</u>	<u>APPROXIMATE DATE</u>
Two	\$15,500	December 13, 1971
Three	\$10,000	October 8, 1974
Four	\$10,000	October 21, 1974
Five	\$15,000	November 12-21, 1974

(Title 29, United States Code, Section 186(b)).

COURT SIX

The Grand Jury further charges:

1. In or about January 1, 1968 up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, FRED R. FIELD, JR., the defendant and United Brands Company and other persons and corporations known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, to violate Title 18, United States Code, Section 1962(c) and Title 29, United States Code, Section 186.

2. It was a part of said conspiracy that the defendant FRED R. FIELD, JR., being an officer and employee of labor organizations, to wit, the International Longshoremen's Association and other labor organizations related to and affiliated with the International Longshoremen's Association, which represented the employees of employers who were engaged in an industry affecting commerce, would and did request, demand, receive and accept payments and deliveries of moneys from said employers.

3. It was further a part of said conspiracy that the defendant FRED R. FIELD, JR., being a person employed by and associated with enterprises engaged in, and the activities of which affected interstate and foreign commerce, to wit, an association, union and group of individuals known as the International Longshoremen's Association and other associations, unions and groups of individuals related to and affiliated with the International Longshoremen's Association, would and did conduct and participate, directly and indirectly, in the conduct of such enterprises' affairs through a pattern of racketeering activity, to wit, acts constituting violations of Title 29, United States Code, Section 186.

4. The allegations contained in Counts One through Five of this indictment are repeated and reallocated as though fully set forth herein as constituting and describing some of the means by which the defendant and co-conspirators committed the offense charged in Count Six of this indictment.

OVERT ACTS

In furtherance of said conspiracy and to affect the objects thereof, the following overt acts, among others were committed in the Southern District of New York:

1. On or about December 13, 1971, the defendant FRED R. FIELD, JR. met with a representative of the United Brands Company.

2. On or about December 13, 1971, the defendant FRED R. FIELD, JR., received a sum of money from a representative of the United Brands Company.

3. On or about October 8, 1974 the defendant FRED R. FIELD, JR. received approximately \$10,000 from a representative of the United Brands Company.

4. On or about October 21, 1974 the defendant FRED R. FIELD, JR. received approximately \$10,000 from a representative of the United Brands Company.

(Title 18, United States Code, Section 371).

COUNT SEVEN

The Grand Jury further charges:

On or about the 15th day of June, 1972, in the Southern District of New York and elsewhere, FRED R. FIELD, JR., the defendant, who during the calendar year 1971 was married, unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the joint income tax due and owing by himself and his wife to the United States of America for the calendar year 1971, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed a false and fraudulent joint income tax return on behalf of himself and his wife, which was filed with the Internal Revenue Service and which stated that their joint taxable income for the said calendar year was \$27,001 and that the amount of income tax due and owing thereon was \$6740 whereas, as the defendant then and there well knew, their joint taxable income for the said calendar year was at least \$75,501 upon which an income tax of at least \$30,745 was due and owing to the United States of America.

(Title 26, United States Code, Section 7201).

JHW:dif

10a
COUNT EIGHT

The Grand Jury further charges:

On or about the 15th day of June, 1972, in the Southern District of New York, FRED R. FIELD, JR., the defendant, unlawfully, wilfully, and knowingly did make and subscribe a joint United States Income Tax Return, Form 1040, for the calendar year 1971, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, and which he did not believe to be true and correct as to a material matter, to wit: the omission of \$48,500 from his reported 1971 adjusted gross income of \$34,157.

(Title 26, United States Code, Section 7206(1)).

COUNT NINE

On or about the 7th day of April, 1975, in the Southern District of New York and elsewhere, FRED R. FIELD, JR., the defendant, who during the calendar year 1974 was married, unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the joint income tax due and owing by himself and his wife to the United States of America for the calendar year 1974 by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed a false and fraudulent joint income tax return on behalf of himself and his wife, which was filed with the Internal Revenue Service, and which stated that their joint taxable income for the said calendar year was \$28,675 and that the amount of income tax due and owing thereon was \$612 whereas,

as the defendant then and there well know, their joint taxable income for the said calendar year was at least \$63,675 upon which an income tax of at least \$24,247 was due and owing to the United States of America.

(Title 26, United States Code, Section 7201).

COUNT TEN

The Grand Jury further charges:

On or about the 7th day of April 1975, in the Southern District of New York, FRED R. FIELD, JR., the defendant, unlawfully, wilfully and knowingly did make and subscribe a joint United States Income Tax Return, Form 1040, for the calendar year 1974, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, and which he did not believe to be true and correct as to a material matter, to wit: the omission of \$35,000 from his reported 1974 adjusted gross income of \$43,864.

(Title 26, United States Code, Section 7206(1)).

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

COURT'S MEMORANDUM ON MOTIONS ADDRESSED TO
INDICTMENT

12a

(Dated April 22, 1977) (pp. 12a-23a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

76 Cr. 1117

-against-

MEMORANDUM

FRED R. FIELD, JR.,

Defendant.

-----X

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.
United States Attorney for the Southern District
of New York
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ALAN LEVINE, ESQ.
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Attorney for Defendant

LASKER, D.J.

Fred R. Field, Jr., whom the government alleges to be a General Organizer of the International Longshoremen's Association (ILA), is charged in a three count indictment with unlawfully demanding and receiving money from United Brands Company, an employer of longshoremen, from late 1968 through December, 1971. Count One alleges violations of the Organized Crime Control Act of 1970 (hereinafter the Act or the Statute), specifically 18 U.S.C. §§1961(c), (4) and (5); & 1962(c); Count Two alleges a single violation of 29 U.S.C. §186(b); and Count Three alleges a conspiracy to commit the above offenses in violation of 18 U.S.C. §371.

Field moves to dismiss Count One and that portion of Count Three which charges conspiracy to violate the Act, alleging various infirmities in the indictment and the Statute on which it is based.

I. Failure to Allege a Crime Under the Act

Under 18 U.S.C. §1962(c) it is unlawful

"for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity..."

"Racketeering activity" includes illegal payments and loans

to labor organizations or their employees indictable under 29 U.S.C. §186. 18 U.S.C. §1961(1)(C). A "pattern of racketeering activity" requires at least two acts of racketeering activity within ten years of each other, one of which must have occurred after the effective date of the Statute. 18 U.S.C. §1961(5).

Field argues that the indictment is defective because it fails to specify in what manner he is alleged to have conducted or participated in the conduct of the ILS's affairs through a pattern of racketeering activity, as distinct from simply engaging in corrupt activities on his own behalf. He claims that the statute is not aimed at individuals who merely happen to be union employees and who take advantage of their position for individual gain, but at unions whose activities are conducted in an illegal fashion. According to Field an indictment under the Statute must allege more than corrupt behavior on the part of a union official or employee; "it must [allege] that the union itself is corrupt." (Defendant's Memorandum at 4) While it is true that such allegations are missing from this indictment, Field's argument that an offense has therefore not been stated is unpersuasive.

The key phrase "to conduct or participate ... in the conduct of [the] enterprise's affairs through a

pattern of racketeering activity" is nowhere specifically defined. Indeed, the Act has been challenged as being unconstitutionally vague for this very reason. United States v. Scalzitti, 408 F.Supp. 1014 (W.D. Pa. 1976); United States v. White, 386 F.Supp. 882 (E.D. Wisc. 1974); United States v. Stofsky, 409 F.Supp. 609 (S.D.N.Y. 1973). In United States v. Stofsky, supra, the court considered the vagueness argument at length and concluded that the absence of explanatory language regarding the requisite nexus between the unlawful acts of an individual and union activities is not fatal for the simple reason that no particular degree of interrelationship is required.

Judge Pierce stated:

"... §1962(c) sufficiently places men of reasonable intelligence on notice that persons employed by the type of enterprise therein defined cannot resort to a pattern of specified criminal acts in the conduct of the affairs of that enterprise. Set forth, then, on the face of the statute is a necessary connection between the person who would commit the enumerated predicate acts and the enterprise, and between the acts and that person's participation in the operations of the enterprise.

It is true that the statute does not define this connection by distinguishing between predicate acts which play a major or a minor role, or any role at all, in what might be seen as the usual operations of the enterprise; nor does it require that such acts be in furtherance of the enterprise, as defendants

suggest it must.

In this Court's view, the statute fails to state these requirements because Congress did not intend to require them in these terms. The perversion of legitimate business may take many forms. The goals of the enterprise may themselves be perverted. Or the legitimate goals may be continued as a front for unrelated criminal activity. Or the criminal activity may be pursued by some persons in direct conflict with the legitimate goals, pursued by others. Or the criminal activity may, indeed, be utilized to further otherwise legitimate goals. No good reason suggests itself as to why Congress should want to cover some, but not all of these forms; nor is there any good reason why this Court should construe the statute to do so. It plainly says that it places criminal responsibility on both those who conduct and those who participate, directly or indirectly, in the conduct of the affairs of the enterprise, without regard to what the enterprise was or was not about at the time in question." 409 F.Supp. at 613.

Accord, United States v. Scalzitti, supra; United States v. White, supra.

This analysis, with which we agree, is dispositive of Field's contention. Section 1962(c) nowhere requires proof regarding the advancement of the union's affairs by the defendant's activities, or proof that the union itself is corrupt, or proof that the union authorized the defendant to do whatever acts form the basis for the charge. It requires only that the government establish that the defendant's acts were committed in the conduct

of the union's affairs. This much is plainly alleged in Field's indictment.

II. Ex post facto Nature of the Act; Statute of Limitations Claims; and the Ambiguity and Vagueness of the Act.

As noted above, under §1961(5) a "pattern of racketeering activity" requires proof of two such acts, but only one of these must have occurred after the effective date of the Statute. Thus, Congress clearly contemplated that one or more of the underlying acts of racketeering activity necessary to comprise a pattern could be acts which took place prior to October 15, 1970, the date the Statute went into effect. In this case Field is charged with having received unlawful payments as a union official in violation of 29 U.S.C. §186 (a "racketeering activity") on seven occasions from September, 1968 to March, 1969, and again on seven more occasions from September, 1971 through December 13, 1971. Field contends that insofar as the Statute permits him to be charged with acts committed prior to its effective date, it is violative of the constitutional ban on ex post facto laws.

We are in agreement with at least two other courts which have considered and rejected this contention. United States v. Campanale, 518 F.2d 352 (9th Cir. 1975), cert. denied, 423 U.S. 1050 , reh. denied, 424 U.S. 950 (1976); United States v. Mandel, 415 F.Supp. 997, 1022

(D. Md. 1976). An ex post facto law is one which "makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes the action," or which "aggravates a crime, or makes it greater than it was, when committed," or which "changes the punishment, and inflicts greater punishment, than the law annexed to the crime, when committed." Calder v. Bull, 3 Dall. (U.S.) 386, 390 (1798). The Statute does none of these things. Rather, it creates a separate and distinct crime, comprised of the commission of at least two previously defined illegal acts, which is not complete until the second act is done. Because by the terms of §1961(5) the later act must occur after October 15, 1970, the offense itself is incapable of completion prior to that time. One who has committed acts of racketeering activity prior to that date is on notice that the commission of a further such act within the prohibition of the Statute will subject him to liability for a new offense. He thus has "the notice necessary to conform his actions to the new requirements of the law." United States v. DeStafano, 429 F.2d 344, 347 (2d Cir. 1970), cert. denied 402 U.S. 972 (1971). This is all that the ex post facto clause requires.

Field also argues that it is violative of the five year federal statute of limitations for non-capital

offenses, 18 U.S.C. §3282, to permit prosecution for the acts committed in 1968 and 1969 under an indictment returned on December 10, 1976. Although the five year limitations period clearly prohibits the government from charging Field with the separate violations of 29 U.S.C. §186 occurring prior to December 10, 1971, which were complete with the acceptance of each of the alleged unlawful payments, it cannot reasonably be read to bar prosecution for engaging in a pattern of racketeering activity where, as here, at least one of the alleged acts of racketeering activity took place within the five year period. With respect to this offense, the separate violations of 29 U.S.C. §186 are simply elements of the violation. The Act provides an example of a continuing offense for purposes of computing the time at which the statute of limitations begins to run. The "nature of the crime ... is such the Congress must assuredly have intended that it be treated as a continuing one." Toussie v. United States, 397 U.S. 112, 115 (1970). The language of the Act, which makes a pattern of conduct the essence of the crime, "clearly contemplates a prolonged course of conduct." Id. at 120. Like the statute of limitations for conspiracies, which runs from the date of the last overt act, Grunewald v. United States, 353 U.S. 391, 396-97 (1957), the statute of limitations for violations of the Act runs from the date of the last alleged act of

racketeering activity.

In a variation on his ex post facto and statute of limitations challenge, Field contends that the Act is self-contradictory and vague. It has been challenged as being void for vagueness in other cases, and has consistently been upheld. See, e.g., United States v. Campanale, supra, 518 F.2d at 363-64; United States v. Stofsky, supra; United States v. Scalzitti, supra; United States v. White, supra. And see, United States v. Parness, 503 F.2d 430, 440-42 (2d Cir. 1974) (involving a vagueness challenge to §1962(b)). Field takes a slightly different tack. He claims that the Act is internally inconsistent and self-contradictory, because although by its terms it seems to permit convictions based in part on acts of "racketeering activity" committed prior to October 15, 1970, no such acts could possibly have occurred before that time because "racketeering activity" is itself a construct of the Statute. Prior to the effective date, such acts were "merely" violations of other statutes, in this case, e.g., 29 U.S.C. §186. Since the Statute is allegedly contradictory on its face, Field maintains that the ambiguity must be resolved in favor of the defendant, by which he means that proof of acts prior to October 15, 1970 should not be allowed.

This argument is spurious. "Racketeering activity" is a statutory term which specifically incorporates any

acts indictable under a number of specified previously existing statutes, including 29 U.S.C. §186. That the label "racketeering activity" did not come into existence until the passage of the Act in no way renders the Statutes ambiguous in the manner Field suggests. The express provision in §1961(5) that at least one of the acts of racketeering activity must take place after the effective date of the Statute would be meaningless unless Congress intended that a predicate act could be one which occurred earlier. This section renders perfectly clear the purported ambiguity. On its face the Act makes plain what is confirmed by the legislative history cited in United States v. Campanale, supra, 518 F.2d at 364, n. 34, that Congress intended the Act to apply to offenses made up in part of violations of other statutes occurring prior to October 15, 1970 and subsequently labeled "racketeering activity."

III. Unconstitutional Presumption Regarding the Existence of a Pattern

Field's final contention is that the Statute creates an unconstitutional presumption that two acts of racketeering activity committed within ten years of each other constitute a pattern. The problems inherent in the failure of the Statute more completely to define the word "pattern" has been the focus of many of the attacks

claiming that the Act is void for vagueness. See, e.g., United States v. Stofsky, supra; United States v. Scalzitti, supra; United States v. White, supra. These cases have unanimously upheld the Statute. In Stofsky, the court held that the word "pattern" includes "a requirement that the racketeering acts must have been connected with each other by some common scheme, plan or motive so as to constitute a pattern and not simply a series of disconnected acts." 409 F.Supp. at 614. See also United States v. White, supra, 386 F.Supp. 883-84. The government agrees that at trial it must prove the existence of such a pattern. (Government's Brief at 16) Moreover, assuming arguendo that two isolated acts of racketeering activity within ten years of each other is per se insufficient to constitute a pattern, but cf. United States v. Parness, supra, and discussion thereof in United States v. Moeller, 402 F.Supp. 49, 57-58 (D. Conn. 1975), Field is in a poor position to obtain a dismissal of the indictment on this ground. He is charged here with fourteen separate acts within a four year period under circumstances which, if proved at trial, would seem to constitute a clear pattern of conduct.

Field's argument suffers from another defect. There is no constitutional principle that would prevent Congress from labeling the commission of two crimes within a speci-

23a

fied period of time and in the course of a particular type of enterprise a "pattern" of activity, whether or not a sequence of two similar acts amounts to a pattern as that term is ordinarily understood. Further, Congress is constitutionally entitled to make such behavior an independent criminal offense, punishable more severely than simply twice the penalty for each constituent offense.

For the foregoing reasons, the motion to dismiss is denied in all respects.

It is so ordered.

Dated: New York, New York
April 22, 1977.

MORRIS E. LASKER

U.S.D.J.

1 gtjw 13

2 THE COURT: Let us do that after we select
3 the jury, but what kind of questions do you want?

4 MR. FEITELL: I want to talk about any part
5 of the opening on the part of the government referring to
6 its so-called co-conspirators.

7 There is a list in the bill of particulars
8 of alleged co-conspirators.

9 THE COURT: You mean referring to them by
10 name?

11 MR. FEITELL: No. Referring to them as
12 co-conspirators. It is a threshold legal point.

13 THE COURT: I am not going to deny that at
14 all. Sooner or later I am going to have to rule on it
15 openly with the jurors with regard to admissibility of
16 evidence.

17 MR. FEITELL: I think the problem comes up
18 in a different way in the opening.

19 Here we have a number of employees of
20 United Brands who had conversations with each other
21 possibly regarding the turnover of monies to Mr. Field.
22 The only person acknowledged to have any direct contact
23 with Mr. Field in regard to the turnovers -- and I say
24 acknowledged by the government -- is Mr. Hachmann.

25 Now, Mr. Hachmann's conversations with

1 gtjw 14

2 various employees of United Brands --

3 THE COURT: Mr. Feitell, you are already
4 giving a summation to me.

5 My policy, and it is a decided policy on the
6 basis of my experience with regard to openings and
7 summations, is to allow them to be as broad and ranging as
8 anybody cares.

9 I am a believer that a jury is most likely
10 to come up with a right answer if they have all the facts,
11 and let them say whatever they want as openly as possible
12 and let you say or deny.

13 MR. FEITELL: To characterize the victims
14 as co-conspirators is to take advantage of the New Rules --

15 THE COURT: I will say they have to find
16 they are co-conspirators and not victims.

17 MR. FEITELL: I would like to know what
18 your Honor's feeling is about counsel interrupting
19 openings.

20 THE COURT: I have a policy against it.
21 Objection should be reserved except for outrageous conduct,
22 and if there are objections I will consider it and
23 make such corrections as I think appropriate afterwards.

24 MR. WING: I have one point on an opening
25 as well.

1 jb:mg 4

42

2 This is a shakedown case, a case of modern-
3 day piracy in which a corrupt union official utilized the
4 power and prestige of his union office to extort more
5 than \$124,000 from a banana company, a company which re-
6 lied on the members of this man's union to unload the
7 ships that carried its bananas.

8 We will prove over the next few days that
9 the corrupt union official of whom I speak is this man,
10 Fred Field.

11 We will prove in this courtroom that he is
12 one of the highest ranking officials of the International
13 Longshoremen's Association.

14 We will prove that he is a sophisticated and
15 clever man who committed and perpetrated these crimes,
16 these hold-ups, not with a gun or a knife, or any other
17 traditional tools of piracy, but over a nice lunch in a
18 good restaurant or in an expensive hotel room with a
19 smile on his face and a few quiet words that conveyed
20 a threat of economic damage so vast that this company
21 could not afford to take the risk of saying no.

22 It all began in the waning days of 1968 when
23 a relatively husky man boarded an Eastern Airlines shuttle
24 flight up in Boston and traveled to New York. When he
25 arrived at LaGuardia Airport he went through the terminal

1 jb:mq 10

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2 a strike in the South Atlantic and Gulf ports, that they
3 were going to have to pay Mr. Field \$500 in cash per
4 ship for every ship unloaded during that strike.

5 It was made clear to Mr. Hachmann that if the
6 company did not go along with that, that Mr. Field would
7 see to it that the banana boats did not work, that they
8 did not get unloaded.

9 Mr. Hachmann told Mr. Field that he would
10 have to consult with the company about that, and he did
11 consult with the company, and eventually the payments were
12 authorized, and during that particular strike, Mr. Hachmann
13 paid over to Mr. Field approximately \$41,000 in cold
14 cash.

15 The first payment was made at LaGuardia Air-
16 port in the parking lot, as I told you. Most of the
17 other payments were made in the privacy of Mr. Field's
18 private apartment on 56th Street in Manhattan, so as to
19 insure that there would be no witnesses to this particular
20 transaction, and in fact, as you will hear from
21 Mr. Hachmann, no one was present except him and Mr. Field
22 at any of these payoffs, any of these or the ones that
23 followed.

24 Now, I want to make one thing very clear.
25 We do not contend and we are not going to prove that

1 gtjw 6 Hachmann - direct

2 to my boss and I would be in touch with him at a later date.

3 Q And did you, in fact, go back to Boston and
4 talk to somebody at the company?

5 A Yes, sir, I did.

6 Q Who was that?

7 A The same person, Mr. Will Lauer.

8 Q Was anyone else present at this conversation?

9 A No, sir.

10 Q As best you recall, what did he say to you
11 and what did you say to him?

12 MR. FEITELL: I will object to Mr. Lauer's
13 conversation.

14 THE COURT: All right.

15 MR. WING: Mr. Lauer is listed as a co-conspirator.

16 MR. FEITELL: May we approach for some
17 argument on this, your Honor? I think we have reached
18 the point --

19 THE COURT: Is that in the indictment?

20 MR. WING: It is in the bill of particulars,
21 your Honor. He is listed along with all the other people.

22 MR. FEITELL: This is what I wanted to raise
23 this morning.

24 THE COURT: Hold it, please. I will see
25 counsel here.

1 gtjw 7 Hachmann - direct

2 (In the robing room - counsel present)

3 MR. FEITELL: In the bill of particulars,
4 it is true that Mr. Hachmann and Mr. Lauer are revealed
5 as co-conspirators in response to my request for the
6 names of co-conspirators.

7 I raise now with your Honor this issue, which
8 I sought to raise this morning:

9 This case reveals, if the facts are believed,
10 that this company is the victim of the defendant, that
11 they were the subjects of a shakedown and extortion.

12 I am urging upon the Court that persons who
13 are the victims of crime and pay egregious extortionate
14 demands don't become accomplices to the recipient.

15 THE COURT: I am sorry, I don't agree with
16 that. I think that is too simple an explanation of the
17 law and I think it is possible for the Court and for
18 the jury to find that they were co-conspirators even if
19 they were pressured into becoming co-conspirators.

20 If that is the theory on which you claim that
21 this is not admissible, it is overruled.

22 MR. FEITELL: It is not admissible and it is
23 not binding. That is my point.

24 THE COURT: I hear your point.

25 All right.

1 gtjw 8 Hachmann - direct

2 (In open court)

3 THE COURT: Ladies and gentlemen of the
4 jury, before the witness answers the question, I want to
5 give you an explanation of law.

6 The law permits statements of somebody who is
7 a co-conspirator with the defendant be put into evidence
8 through a third person, in this case through Mr. Hachmann
9 about Mr. Lauer's statements.

10 However, such statements are admissible only
11 if that person actually is a co-conspirator. Neither you
12 nor I can say at the present time that that is so.

13 Consequently, I am allowing such statements to
14 go before you subject to the possibility that I learn
15 more about the case I may rule that Mr. Lauer was not a co-
16 conspirator, or even if I do rule that you may consider
17 such matters, you later will have to decide whether
18 you believe Mr. Lauer was a co-conspirator or not and
19 whether or not his statements are binding on Mr. Field.

20 For the time being and subject to connection,
21 as the expression goes, I will allow the question to be
22 answered.

23 Mr. Hachmann, that is a long statement, but
24 you can tell us what your conversation was with Mr. Lauer.
25

1 jbjw 2 Hachmann - direct

2 Q Did you pay over the cash which was still
3 left at that time?

4 A Yes, sir.

5 Q When you got back to Boston, did you talk
6 with anyone about what had happened at the hotel?

7 A Yes, sir, I certainly did.

8 Q Who was that?

9 A Mr. Lauer, my boss.

10 Q When and where did that conversation take
11 place?

12 A In Mr. Lauer's office in Boston, Massachusetts.

13 Q When in relation to your return to Boston?

14 A Soon as I could get there. The very next
15 morning. Soon as I got in Boston I went right to his
16 office.

17 Q Was there anyone else present?

18 A No, sir, there was not.

19 Q As best you recall, what was that conversa-
20 tion?

21 A Well, the best I --

22 MR. FEITELL: I object, your Honor.

23 THE COURT: Sustained.

24 MR. WING Your Honor, it's in furtherance
25 of the whole conspiracy --

1 jbjw 3

. Hachmann - direct

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2

MR. FEITELL: May we have argument at the

3

bench?

4

THE COURT: No. I don't need argument.

5

On the basis of the instructions I gave the jury yesterday, as a statement of an alleged co-conspirator, I will allow it.

7

8

MR. FEITELL: Would your Honor repeat the

9

instruction.

10

THE COURT: . No.

11

Q What was the conversation?

12

A It was essentially the same as I just

13

related here.

14

I told Mr. Lauer exactly what happened from the time I arrived at the hotel and -- you want me to repeat, tell you?

16

17

Q That's all right.

18

What else did you tell him besides what happened to you at the hotel?

19

20

A Well, I told him that I was at fault for mis-handling the situation, that I probably should resign as a result of that or that in any event I ought to, even though I didn't have the money, to make some kind of restitution for the money that I had lost.

21

22

23

24

25

He was upset but very --

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- Hachmann - direct

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MR. FEITELL: Objection. Move to strike.

THE COURT: Sustained.

Q What did Mr. Lauer say?

A He said that neither one of these alternatives were acceptable to him and that -- and that's about it. He calmed me down. I was pretty distraught.

Q What, if anything, did he say about whether you would have to pay back the money that was stolen?

A He said that wouldn't be necessary.

Q Was there any conversation about going back to Mr. Gibbon?

A Yes, sir. Not at that time. Not at that time. At a later date, he told me to go see Mr. Gibbons, which I did.

Q Did you amek one final payment that year, to Mr. Field?

A Yes, sir, I did.

Q Your expense record reflects that the next trip you took to New York after the Hilton Hotel trip was December 13th and it also reflects a Boston-New York-Boston on that date.

Did you make a payment to Mr. Field on that date?

A Yes, sir. I did.

side, as to that extension?

A Mr. Field and the banana handling council.

Q Did you get that extension?

A Yes, we did.

Q When you went back to Boston, did you tell anyone about your luncheon with Mr. Field?

A Yes, sir.

Q Who was that?

A I told it to my then boss. Mr. Lauer had left the company's employ in the meantime and at that particular period of time I was reporting to a different man.

Q And who was that?

A Mr. Meltzer.

Q What was his position?

A First name is Donald.

Q What was his position in the company?

A He was vice-president of finance and administration.

Q And he was your immediate supervisor?

A Yes, sir, he was.

Q Was there anyone else present when you talked with him?

A No, sir, there was not.

Q And as best you recall, when did you have the conversation relative to your luncheon with Mr. Field?

A The very next day that I got back to the office.

I believe it was the next day. He may have been out of the office but it was as soon as I could get to him.

Q And can you tell the jury as best you recall what your conversation was with Mr. Meltzer?

What did you say and what did he say?

MR. FEITELL: Objection to what Mr. Meltzer said.

MR. WING: He is listed as a co-conspirator.

THE COURT: Overruled.

A It was a rather short conversation. I simply told him that I had lunch the previous day with Mr. Field; that he was demanding \$35,000 and that in return for this, if we gave it to him, he said that we would have three years of labor peace.

I also added at that point that I thought that, not we, that Mr. Taylor should be advised, Mr. John Taylor, who at that time was the president of the United Fruit Company which is one of the subsidiaries in the United Fruit Company, I told you, the company that grows

transports, and transports and imports and sells

bananas, so I thought that he ought to be advised

this.

Q What did Mr. Meltzer say?

A He told me to tell him.

Q He told you to tell Mr. Taylor?

A Yes.

Q Did he say anything else about whether or

not to pay Mr. Field the money?

A No, sir, he did not.

Q Did you then have a conversation with

Mr. Taylor?

A Yes, sir, immediately after that.

Q Where was Mr. Taylor's office?

A He was in his office which was on the same floor as Mr. Meltzer's office, within 50 feet, 50 to 100 feet, 50 feet of each other.

Q Was there anyone else present at this conversation besides you and Mr. Taylor?

A No, sir.

Q Can you tell the jury as best as you recall what you said to Mr. Taylor and what he said to you?

A As best I recall, I walked in his office, and he was -- he had a large office -- and he was kind of

standing by a sofa. I went up to him and I told him essentially the same story that I told Mr. Meltzer, that I had had lunch the day before with Mr. Field, that he was demanding \$35,000 in return for which he would guarantee us labor peace for the next three years and I don't -- there was no real reaction as I remember it. He kind of turned and walked toward his desk and I kind of turned and walked out of the office.

I went and stuck my head in Mr. Meltzer's office and said I told John and I took off and went back to my own office.

Q Were you subsequently advised that the company would authorize that payment?

A Yes, sir, I was, within a day or two.

Mr. Meltzer called me in his office and said that we were going to pay Mr. Field his \$35,000 but that, that he didn't have the money and he couldn't get \$35,000 in short order -- well, short order is not good -- within a reasonable period of time, but that he could get roughly a third of it within a week or two and then another third within a week or two and another third within a week or two and he asked me if I thought this would be acceptable to Mr. Field and I said yes, I was sure that it would be.

Q Did you thereafter report back to Mr. Field?

1 Q Did there come a time when you became aware
2 that the United States Attorney's Office for the
3 Southern District of New York was investigating the ac-
4 tivities that you have testified about here in this court-
5 room?
6

7 A Yes, sir, I certainly did.

8 Q Do you recall when you first learned that?

9 A Yes, sir. It was in the sprint of 1975, May,
10 I think.

11 Q And directing your attention to August of
12 1975, did you receive a telephone call from Fred Field
13 at that time?

14 A Yes, sir, I did.

15 Q Where were you?

16 A In my office.

17 Q Did you make notes of that call?

18 A Yes, sir, I did.

19 Q Showing you Government's Exhibit 1K for iden-
20 tification, can you identify that?

21 A Yes, sir, I can.

22 Q Are those the notes that you made of that
23 call?

24 A Yes, sir, they are.

25 Q When were the notes made in relation to the

1
2 call?

3 A While we were both talking.

4 Q And have you reviewed the notes prior to coming
5 to court today?

6 A Yes, sir, I have.

7 Q Without looking at them, can you tell us as
8 best you recall what was that conversation? What did
9 Mr. Field say to you and what did you say to Mr. Field?

10 A As best I can recall, he called and said that
11 the people in Washington were saying that our finance
12 man was talking, and I said something to the effect that
13 I understood that they were looking into everything I
14 ever did, and he said something to the effect of "Remember
15 Chink." And I said something to the effect that we should
16 not be talking on the phone, and he said, "Remember Chink;
17 don't forget."

18 And I said "OK" and hung up.

19 Q Do you recall him saying anything else at the very
20 end of that conversation?

21 A Yes. He says, "Remember Chink, you know what
22 I mean."

23 Q First of all, can you tell us who was the
24 finance man that was referred to there?

25 A I assume it was Don Meltzer.

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MR. FEITELL: Objection. Move to strike.

THE COURT: There was no statement made. He was the finance man at that time, is that right?

THE WITNESS: Yes, sir.

Q And did you know at that time whether or not Mr. Meltzer had been down talking to the United States Attorney's Office?

A Yes, sir, I knew.

Q You knew what, sir?

A I knew that he had been down talking.

I didn't know he had been to Washington; I don't mean that. But I knew that Mr. Meltzer had been in contact with your office.

Q And who was Chink?

A Chink was the nickname for Mr. Henry, Clarence Henry.

Q Who was Clarence Henry?

A He has since passed away. He was the leader of the ILA black local in New Orleans, general cargo local in New Orleans.

Q Had he passed away at the time of this phone call?

A Yes, sir.

Q What did you understand Mr. Field to mean when

1 jb:mq 12

Hachmann-direct

2 he said to you, "Don't forget Chink, you know what I
3 mean"?

4 MR. FEITELL: Objection.

5 THE COURT: Overruled.

6 MR. FEITELL: May we have an offer of proof
7 at the bench?

8 THE COURT: No.

9 You may answer the question.

10 A I understood him to mean that if it came to
11 push or shove and I had to explain what I did with some
12 money, that I would say that I gave it to Mr. Henry.

13 Q And he was dead?

14 A Yes, sir. At that time-- at this time he is
15 dead. He wasn't dead prior to this.

16 He died in 1974.

17 THE COURT: Excuse me. I didn't get that.

18 THE WITNESS: He died in 1974.

19 THE COURT: But at the time of the conversation
20 he was or was not dead?

21 THE WITNESS: He was dead. The conversation
22 was August 7, 1975.

23 Q Mr. Hachmann, are you testifying here today
24 pursuant to an order of immunity which provides that nothing
25 you say here can be used against you in any criminal

AFTERNOON SESSION

2:00 P.M.

(In open court - jury present)

BEVERLY R. HACHMANN, resumed.

THE COURT: Good afternoon.

MR. FEITELL: May I proceed, your Honor?

THE COURT: Yes, Mr. Feitell.

CONTINUED CROSS EXAMINATION

BY MR. FEITELL:

Q Earlier in the day you told us, Mr. Hachmann, that this white unlettered envelope that I showed you was more or less like the envelope you used, right?

A Yes.

MR. FEITELL: I will offer this into evidence.

MR. WING: No objection.

THE COURT: Exhibit A received.

(Defendant's Exhibit A received in evidence)

Q You told us that sometime in 1975 Mr. Field made a telephone call to you.

A Yes, sir, he did.

Q And he told you about something happening

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Hachmann - cross

in Washington and the name "Chink" came up in the conversation, right?

A Yes, sir.

Q Mr. Wing was carrying around a piece of paper which he showed to you while you were testifying, right?

A Yes, sir.

Q Now, you said at that time of this alleged telephone call that you made some notes of a call.

A Yes, sir.

Q And in this entire case, over all of these years, that's the one and only note that you have, right?

MR. WING: Objection.

THE COURT: Sustained.

He has said that.

Q Well, with respect to all of these other phone calls that you had with Mr. Field, did you make notes?

A No, sir, I didn't.

MR. WING: Same objection.

THE COURT: I think you can give the jury and me a little credit for paying attention to the testimony, Mr. Feitell. We know that.

Q Where were you when this alleged telephone

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Hachmann - cross

call was made to you in 1975?

A In my office in Boston.

Q Do you have an independent recollection of the date of the call?

A No, sir, I -- I know the date I put on that piece of paper.

Q When did you put the date on the paper?

A At -- right at that time, the date of the conversation.

Q Now, this piece of paper is not in evidence, it is only marked for identification, but I am going to ask you to look at it --

MR. FEITELL: I would like to have it marked as a defendant's -- well, it has been marked as a government's exhibit for identification.

Q Would you take a look at this (handing).

A Yes, sir.

Q Is that the note --

THE COURT: What exhibit number is it?

MR. FEITELL: K, I think.

THE WITNESS: 1-K.

THE COURT: All right, 1-K.

Q Is that the piece of paper that you were looking at when you were testifying?

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Hachmann - cross

MR. WING: Objection. He was not looking at it when he was testifying.

THE COURT: I don't recall whether he was or he wasn't.

A It was down like that (indicating).

Q It was up on your stand, right?

A Yes, sir.

Q And Mr. Wing had handed it to you, right?

Right?

A Yes, sir.

Q And he asked you questions about it, right?

A Yes, sir.

Q And you say it was face down, right?

A That's what I say.

Q Well, when was the last time you had seen it before he handed it up to you?

THE COURT: You mean examined it?

MR. FEITELL: Yes.

A I guess when I gave it to him.

THE COURT: When was that? We don't know when that was.

THE WITNESS: When was it? Several weeks ago.

THE COURT: All right.

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Hachmann - cross

THE WITNESS: I don't know. A week.

Maybe not that long.

A week ago, maybe.

Q That was the first time you showed it to Mr. Wing?

A Yes, sir.

Q You testified in the grand jury about this case way back in December of '76, didn't you?

THE COURT: Yes, he did.

A December 10th.

Q And you talked to Mr. Wing about the case even before that?

A Yes, sir.

Q Did you ever tell him about that note?

A No, sir.

Q That note is on a ripped piece of paper, isn't it?

A Excuse me?

Q That note is on a ripped piece of paper?

A Yes, sir. It's from a pad on my desk.

Q Well, where is the rest of the pad?

A This -- this notation was made in 1975.

Q Do you understand the question?

THE COURT: Do you know where the rest of

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Hachmann - cross

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the pad is?

THE WITNESS: I don't know where the rest of the pad is.

THE COURT: Just say so.

Q This notation was made in 1976, you say?

A 1975.

Q When you made the notation, what did you do with it?

A I put it in my desk drawer.

Q Where?

A In my office.

Q On that piece of paper, does the name Mr. Field or Fred appear?

A No, sir.

MR. WING: Objection.

THE COURT: Sustained.

THE COURT: Wait a minute. There is not going to be any testimony about an exhibit which is not in evidence. Put it in evidence if you want to.

MR. FEITELL: Judge, that is exactly what I want to do.

I want this marked as a defense exhibit.

THE COURT: It doesn't make any difference.

MR. WING: The government has no objection.

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Hachmann - cross

I don't care what it is marked.

THE COURT: Defendant's Exhibit B will be admitted into evidence, it was previously Exhibit 1-K.

(Defendant's Exhibit B received in evidence)

THE COURT: You can ask any questions you want about it, except obviously it speaks for itself.

Q Is Fred Field's name down here anyplace?

A No, sir.

Q What happened to the top piece of the paper that appears to have been ripped away?

A I don't know, sir.

Q And you have had custody of this, it has been in your possession, since the time you say you wrote it?

A Yes, sir.

THE COURT: May I see it, please?

MR. FEITELL: Yes.

(Handing)

Q And this date that is written down on it --

THE COURT: Wait just a minute.

MR. FEITELL: All right.

(Pause)

THE COURT: All right.

1 gtjw 8

Hachmann - cross

2 Q And this date that is written down on here,
3 8/7/75, when did you write that down?

4 A The very day that I had the conversation.

5 THE COURT: In other words, on 8/7/75?

6 THE WITNESS: Yes, sir.

7 Q If you had this note when you were striking
8 your deal with the gover-ment for immunity, how come you
9 didn't produce it then?

10 MR. WING: I object to the characterization.

11 THE COURT: I will sustain the use of the
12 word.

13 Why do you have to use phrases like that?

14 In any event, how is it that you didn't
15 advise the government of it before?

16 THE WITNESS: I gave it to him last week --

17 Q Go ahead.

18 A The reason I gave it to him last week was
19 on advice of counsel.

20 THE COURT: I think the question was why
21 you didn't give it to him before last week.

22 THE WITNESS: I didn't think it was that
23 important, to be absolutely honest with you.

24 Q Your counsel told you not to turn over
25 certain evidence?

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Hachmann - cross

THE COURT: You misunderstood it.

I believe you said you gave it because your counsel advised you to give it to Mr. Wing; is that right?

THE WITNESS: Yes.

Q You mean that you have had things in your possession since you have been cooperating with the government that you didn't tell the government about until just on virtually the eve of this trial, right?

A I had that in my possession.

Q Why did you rip the top of the page off?

A I can't tell you that, except to tell you that my recollection is that I did it at the time that I made the notation.

My best recollection is that I had a white pad on my -- next to my telephone, as is my practice. I often write notes as people are talking on the phone.

I don't know this to be the case, but probably there was something else to do with another subject on the top of the page and I -- that's the only explanation I have, sir.

Q Did you put it away in an envelope?

A No, sir, I put it right in my desk.

Q Which desk?

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Hachmann - cross

A My desk.

Q Where?

A My business desk.

Q Where, in your office?

A In my office.

Q Look, you said on this note, among other things, "I said that's right."

You wrote that, right?

A Everything written there is in my handwriting.

Q You said, "I said"?

A I said.

Q And then you get to "He said."

How come you didn't say "Fred said"?

A I have no -- I don't --

Q "He said" is what you wrote, right?

A Yes, sir.

Q You didn't say Fred?

A No, sir.

Q And no where on this piece of paper or any other piece of paper did you write, "Copy of note from Fred Field, a phone call," is that right?

A No, sir, I did not.

Q All it says on the piece of paper here with respect to Chink is, "He said keep Chink in mind, you

1 getjw 11

Hachmann - cross

2 know what I mean".

3 A I think he mentioned Chink twice.

4 THE COURT: The question is what is in the
5 note.

6 Q "Keep Chink in mind".

7 A It says, "Keep Chink in mind. He said keep
8 Chink in mind, you know what I mean."

9 THE COURT: In other words, there are two
10 references to Chink in the note?

11 THE WITNESS: Yes, sir, there is.

12 Q Well, did you say to him during the conver-
13 sation, "Let's sit down and talk about this"?

14 A No, sir, I did not.

15 Q Well, here is this SEC investigation that
16 is going on and people are down in Washington, right,
17 and this is what you are supposed to be talking about on
18 that phone call, right?

19 A No, that's not right.

20 Q Isn't this the background? Doesn't the
21 beginning of this note start off that the caller said
22 that the people in Washington say your finance man is
23 talking, or words to that effect?

24 A That's what it says, something like that.

25 Q And the finance man you told us earlier is

supposed to be Meltzer, right?

THE COURT: Mr. Feitell, understandably you are going kind of fast and to refresh the recollection of the jury and myself and just so there is no confusion, to what did that note relate?

THE WITNESS: It related to a conversation-- a telephone conversation between myself and Mr. Field.

THE COURT: As to what? What were you talking about? What was the subject of the call?

THE WITNESS: Well --

THE COURT: No, I am not asking you to look at it, I am asking you to tell me what the general subject was. I mean the general subject, I don't mean the details.

THE WITNESS: The subject was he said that, "The people in Washington say your finance man is talking," or words to that effect.

Then he said something about, "Remember Chink "

I said something to the effect, "I understand they know everything I've ever done or they are looking"--

THE COURT: I guess I am not making myself clear, Mr. Hachmann. I am not asking you to repeat the conversation, I am asking you what this business in

1 Washington that you were talking about was.

2 THE WITNESS: I didn't -- it was his
3 expression.

4 THE COURT: What did you understand him to
5 mean?

6 THE WITNESS: I understood him to mean that
7 Don Meltzer was talking to the government officials.

8 THE COURT: And do you know what branch of
9 the government?

10 THE WITNESS: Yes, Mr. Wing -- the U.S.
11 Attorney's office.

12 THE COURT: The Department of Justice.

13 Thank you.

14 Q This was about Meltzer talking to people
15 in Washington. Wasn't that the SEC?

16 A I didn't interpret it that way.

17 THE COURT: You asked him what his under-
18 standing was, not what it was.

19 Q You didn't know -- you know that Mr. Wing
20 is in the United States Attorney's office in New York,
21 right?

22 A Yes, sir.

23 Q Well, at about that time, didn't you know
24 that the SEC was conducting a general overall investigation

1
2 into activities of the company?

3 A Yes, sir.

4 Q You knew that.

5 You hadn't met Mr. Wing when you had this
6 conversation, had you?

7 A No, sir. No, sir.

8 Q This alleged conversation.

9 So when Mr. Field allegedly said to you
10 something about somebody talking in Washington, how could
11 you assume that it was Mr. Wing if you had never even
12 met Mr. Wing?

13 MR. WING: I object. That is not what the
14 testimony of the conversation is and that is not what is
15 in the note and he is mischaracterizing what is in the
16 note.

17 THE COURT: I will sustain the objection
18 to the particular question, but I think you can ask a
19 general question less defined.

20 Q Had you heard that Meltzer was down in
21 Washington?

22 A No, sir.

23 Q But you knew that investigation was going
24 on regarding the company, is that right, from what you had
25 read?

gtjw 15

Hachmann - cross

500

MR. WING: May we have a definition of what investigation he is referring to in the question.

MR. FEITELL: If you want to open the door on this --

THE COURT: Yes, I would ask you to specify what investigation you are talking about.

Q The investigation of the SEC into the payment of one and a quarter million dollars to the president of Honduras by the United Fruit Company through cash and --

MR. WING: Objection. Objection.

THE COURT: I didn't mean to specify to that extent.

Did you know there was such an investigation going on?

THE WITNESS: By the SEC?

THE COURT: Yes.

THE WITNESS: Yes, sir, I did.

THE COURT: Did you think Mr. Field was talking to you about that investigation?

THE WITNESS: No, sir, I did not.

Q But you are telling us what your state of mind was at that time, what you surmised he was talking about, right?

gtjw 16

Hachmann - cross

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A Yes, sir.

Q Well, having heard this allegedly on the telephone from him, you said to him, according to your notes, "I said don't talk on the phone". Is that what you said on there?

A That's what I said, sir.

Q So you were afraid you were being wiretapped?

A I didn't have any idea whether I was being wiretapped or not. I considered it very possible.

Q So did you make an arrangement to see Mr. Field to carry forward this conversation?

A No, sir. That was the last conversation I had with Mr. Field to this very day.

Q So you told us that when this case, the SEC matter, came to light in 1975, you went to your files outside of your room, isn't that so?

MR. WING: Objection. That was not his testimony.

THE COURT: I don't believe that was the testimony, no. I don't think the witness has ever said the SEC investigation prompted him --

Q When an investigation into the company commenced and you heard about it, you proceeded to look into your own files, isn't that so?

1
2 A When I was told that there was an investiga-
3 tion being conducted by the U.S. Attorney's office in the
4 Southern District of New York, I guess is the way I was
5 told, yes, I did start to look into my files.

6 THE COURT: But that is the investigation
7 you are talking about?

8 THE WITNESS: This investigation I am talking
9 about.

10 Q And when was that?

11 A To the best of my recollection, it was
12 around May of 1975.

13 Q And when did you start getting these
14 subpoenas that you told us about?

15 A When he -- when Mr. Wing called me down
16 here, which was probably in -- gee, I don't know, October,
17 November.

18 THE COURT: Of what year?

19 THE WITNESS: Of '76.

20 THE COURT: A year ago or two years ago?

21 THE WITNESS: '76.

22 THE COURT: About a year ago?

23 THE WITNESS: Yes, sir.

24 Q Before he called you down, you had heard
25 that the U.S. Attorney's office in this district was

GTjw 1

Hachmann - redirect

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(Robing room discussion between

Court and counsel sealed by order of the Court)

(In open court - jury present)

REDIRECT EXAMINATION

BY MR. WING:

Q Mr. Hachmann, you told us on cross examination that you didn't make any memoranda or writings about any of these payoffs to Mr. Field.

Can you tell me, sir -- this is not intended to be a stupid question -- can you tell me why you did not make any such writings?

MR. FEITELL: I will object to that, your Honor.

THE COURT: Overruled.

A I guess the primary reason is that it's illegal and I just didn't want any record to be in evidence or be available. I just didn't write it out.

Q And did you even want to talk about it over the phone?

A No, sir.

Q In fact, when Mr. Field called you back in August of 1975, you told him at that time that you shouldn't talk about that over the phone?

A Yes, sir, I did.

Q With respect to the notes which you took of that phone call --

THE COURT: That is Exhibit C?

MR. WING: That is Defendant's Exhibit B in evidence.

Q Could you read, because I think many people might have a hard time in reading your writing --

THE COURT: They sure would.

Q Could you read everything that you have on this paper starting at the top line and working down.

A Yes, sir.

I have "8/7/75" underlined.

I have "People in Washington are saying your finance man is talking. Keep Chink in mind."

Then I have a pencilled notation going down under here, "I said that's right, they are looking into everything I ever did."

The next line is some scribbling there or something.

"I said don't talk on phone. He said keep Chink in mind, you know what I mean."

Q What was your understanding when he referred to people in Washington? Who was he talking about?

MR. FEITELL: I will object to that as

asked and answered.

MR. WING: That has never been asked by me.

THE COURT: It can be asked on redirect.

You can't ask who Mr. Field had in mind, you can ask who you believe he had in mind.

MR. FEITELL: This came out on the direct.

MR. WING: It did not.

THE COURT: The question can be asked again on redirect.

Q Who did you think Mr. Field was referring to when he said "People in Washington are saying your finance man is talking"?

A I thought he was referring to labor people.

Q Thank you.

You were not any part or subject of that SEC investigation that has been referred to, were you?

A No, sir, I was not.

Q And when you went to your files in May or June of 1975, that was in relation to information you had about the investigation by this office; is that correct?

A That's correct, sir.

Q Into your activities, is that correct?

A That is correct.

gtjw

Hachmann - redirect

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THE COURT: "This office" meaning the United States Attorney's office?

THE WITNESS: Yes, sir.

Q And when for the first time did you tell anyone in the United States Attorney's office in the Southern District of New York anything about the facts of this case?

A I don't remember the precise date. It was -- I told it to you.

It was, I believe, in October or November of last year.

Q Of 1976?

A Yes, sir.

Q That would be more than a year after this phone call with Mr. Field, is that correct?

A Yes, sir. The phone call in August of 1975.

Q Incidentally, at the time of the phone call, did you have an attorney?

A No, sir.

Excuse me. Yes, I did.

Q And what was that attorney's name?

A Jack Tighe.

Q Is he a New York attorney?

A Yes, sir.

gtjw

Hachmann - redirect

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Q Had he talked to you at all or given you any instructions with respect to whether or not you should talk to Mr. Field?

A He gave me very strong advice, not instructions, but he gave me very strong advice not to talk to Mr. Field.

Q Incidentally, after you got that phone call from Mr. Field, did you talk about it with your lawyer?

A Yes, sir.

Q Did you tell him about that phone call?

A Yes, sir.

Q You testified yesterday, Mr. Hachmann, when Mr. Field first asked you for money, it didn't come as a shock to you.

Page 274, Mr. Feitell.

You were asked the question, "You mean you had been waiting for this for twenty years?"

You answered, "No, sir, I don't mean that."

Mr. Hachmann, what did you mean?

A I meant that there had been, oh, for many years a lot of talk around the waterfront about --

MR. FEITELL: I will object to this, your Honor.

THE COURT: He has a right to say what he meant.

gtjw

Hachmann - redirect

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MR. FEITELL: Now he is reporting hearsay, talk around the waterfront.

THE COURT: He is saying what he meant.

I will advise the jury that the fact that Mr. Hachmann had certain things in mind does not necessarily mean they are true, but you are entitled to know what he had in mind.

MR. FEITELL: What he claims he had in mind.

THE COURT: You are entitled to know what he testified to.

A What I intended was to say that there had been for years rumors about payoffs on the waterfront and so forth, and while I never was involved in that kind of thing, this is what I had -- this is what I -- the reason I said I wasn't shocked.

MR. FEITELL: I will make a motion for a mistrial and a withdrawal of a juror.

THE COURT: I will advise the jury that the fact that the witness has stated that for years there were rumors to that effect has nothing to do with this case. You are to judge only in this case whether or not certain events occurred with intent and so forth, but you are entitled to know what the witness had in mind when he

Defense Objection

62a

1 JBjw 1

Hachmann - redirect

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2 REDIRECT EXAMINATION

3 BY MR. WING:

4 Q Have you and I, before this trial ever
5 started, discussed the difference in taxi fares between
6 December 26th and December 30, 1968?

7 A Yes, sir, we have.

8 THE COURT: Thank you very much.

9 (Witness excused)

10 MR. WING: The government calls Mr. Lauer.

11 THE COURT: Could I see counsel at the
12 side bar.

13 (At the side bar)

14 THE COURT: Since I assume you are going
15 to Mr. Lauer what Mr. Hachmann told him, I thought I
16 would rule now that the reports of such conversations
17 with Hachmann would be admissible. You may wish to make
18 an objection on the record and I will rule now and avoid
19 disruption.

20 MR. FEITELL: To make that objection and
21 to renew my application to the effect that any of the
22 statements made by Mr. Lauer as a victim of an extortion
23 would not be admissible --

24 THE COURT: You need not renew it. I am
25 aware of the fact that --

Defense Objection

1 jbjw

63a

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2 MR. FEITELL: I looked over your ruling
3 previously. You see to say that there was an open
4 question where you have a victim pressured into collaborating
5 in the commission of a crime.

6 THE COURT: I didn't say that. I mean to
7 say that in each instance the Judge must decide at the
8 end of the plaintiff's case whether or not there has been
9 proof that an alleged co-conspirator is a co-conspirator
10 and thereafter, of course, even if the Judge decides that
11 that is the case, the jury must make that decision.

12 MR. FEITELL: I have a continuing objection
13 and I don't have to pop up --

14 THE COURT: You don't have to but I see
15 no difference in the application of the legal rule with
16 this witness and any others, a factual difference
17 in the framework to make the decision.

18 MR. WING: We would submit on the basis of
19 Mr. Hachmann's testimony that we have established that
20 Mr. Lauer was a co-conspirator.

21 THE COURT: I believe that you have but I
22 won't make a final ruling in that regard until it's completed.

23 MR. FEITELL: Will you be giving any ongoing
24 instructions to the jury as to how to treat this so that
25 the ultimate fact is left open for them to consider?

1 jbjw

2 THE COURT: Not ongoing but I will give
3 appropriate instructions when I charge the jury.

4 MR. FEITELL: We are not going to -- could
5 we get an instruction now?

6 MR. WING: We would oppose it because we
7 think the connection has been made.

8 THE COURT: I don't think any further
9 instruction is necessary.

10 MR. FEITELL: Could we do it this way? I
11 would make one objection and ask for an instruction.

12 MR. WING: I will oppose the instruction
13 on the grounds that the connection has been made.

14 MR. FEITELL: I need the benefit of the --

15 THE COURT: I am sorry. I have to rule
16 against you. Yesterday I gave the instruction to the
17 jury. I agree with the government that they have established
18 that Mr. Lauer is a co-conspirator. I am prepared to
19 reconsider the matter if anything should happen during the
20 course of the plaintiff's case which casts doubt upon its
21 validity but I see no reason for a further special instruction
22 at this time and my particular purpose in calling you up
23 here was to avoid having the objections made.

24 MR. FEITELL: We object.

25 (In open court - jury present)

1 jbjw

2 W I L B U R

L A U E R ,

called as

3 a witness by the Government, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WING:

7 Q Mr. Lauer, by whom are you employed?

8 A U.S.M. Corporation.

9 Q Where is that company located?

10 A Boston, Massachusetts.

11 Q What is your position with U.S.M.?

12 A I am a senior vice-president of the company.

13 Q How long have you been with the company?

14 A Five years.

15 Q Prior to that by whom were you employed?

16 A United Brands.

17 Q For how long did you work for United
18 Brands?

19 A I joined United Fruit, a subsidiary of the
20 United Brands, in 1962 and I left United Brands in 1972.

21 Q And during the time that you were there,
22 United Fruit became United Brands?

23 A Yes.

24 Q Can you tell the jury briefly the nature of
25 the work that you did at United Fruit and United Brands

jbjw

Lauer - direct

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and the positions you held there.

A I first joined the company as personnel director in 1962. I was subsequently made vice-president of personnel in the middle sixties and, after Mr. Black took over operations, he promoted me to senior vice-president of administration of the United Fruit Company.

Q Do you know a man named Beverly Hachmann?

A Yes.

Q How did you come to know him?

A He worked for me when I was with United Fruit Company.

Q And what was his position at the time he worked for you?

A He was director of industrial relations.

Q Directing your attention to the year 1971, do you recall that the ILA went out on strike that fall?

A Yes.

Q Do you recall when the strike began?

A I recall that it started sometime in October.

Q And before or about the time that this strike began did you have a conversation with Mr. Hachmann relating to Mr. Fred Field?

A Yes, I did.

Q As best you recall, when and where did

1 jbjw

2' that conversation take place?

3 A It took place in Boston. It took place
4 probably towards the latter part of September.

5 THE COURT: Could you be more specific
6 where in Boston?

7 THE WITNESS: 140 Federal Street, my office.

8 Q Was anyone else present?

9 A Could I correct that?

10 Q Sure.

11 A Prudential Building, at that time. That
12 was United Fruit.

13 Q Was anyone else present?

14 A No.

15 Q Did you know who Fred Field was?

16 A Yes, I did.

17 Q And who did you know Mr. Field to be?

18 A He was the principal contact between the
19 company and the ILA and was an official of the ILA.

20 Q What was your conversation with Mr. Hachmann
21 at that time?

22 A Hachmann told me that Mr. Field had called
23 him and wanted to talk about making arrangements to dis-
24 charge fruit during the strike.

25 Q Did Mr. Hachmann say anything else that you

1 jbjw

Lauer - direct

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2 recall?

3 A No. He reported to me subsequently --

4 Q Before, sticking with the first conversation,
5 did Mr. Hachmann say what if anything he was going to do
6 as a result of the call?

7 A He said he was going to meet with Mr. Field. ✓

8 Q Did he say where?

9 A I don't recall.

10 Q Shortly thereafter, did you have another
11 conversation with Mr. Hachmann about Mr. Field?

12 A Yes.

13 Q Do you recall when and where that conversation
14 took place?

15 A That was in Boston. It was a few days later,
16 perhaps a week, I don't recall specifically.

17 Q And was that in your office in Boston?

18 A Yes, it was.

19 Q Was anyone else present?

20 A No.

21 Q As best you recall, will you tell us what
22 Mr. Hachmann said to you and what you said to Mr. Hachmann?

23 A Hachmann reported to me that Mr. Field had
24 demanded a large lump sum payment for movement of the fruit,
25 discharge of the fruit during the strike.

jbjw

Lauer - direct

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Hachmann said he rejected that completely and they finally agreed on a price per boat discharge of \$500.

Q Do you recall anything else about the particular conversation?

A Not specifically.

Q Do you recall the specific fee that was agreed upon?

A My recollection is it was \$500 per boat discharged.

Q Do you recall whether or not there was any mention of \$1,000 per boat for the boats going --

MR. FEITELL: I'll object to leading.

THE COURT: Sustained.

Q What was your response when Hachmann told you this?

A I agreed that we would meet the demand.

Q Did you have any additional conversations with Mr. Hachmann relating to this demand and the payments to be made?

A I don't recall any.

Q Directing your attention to the latter part of the fall of 1971, did there come a time when you had a conversation with Mr. Hachmann about his going

1 jbjw

Lauer - direct

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2 to New York?

3 A Yes.

4 Q Do you recall when and where that conversation
5 took place?6 A It took place in my office. It was probably
7 in October of 1971.

8 Q Was anyone else present?

9 A No.

10 Q What was the conversation as best you
11 recall?12 A Hachmann came to my office -- well, first
13 I should say that he informed me that he was going to go
14 to New York in connection with a business dinner and while
15 there he intended to make a payment to Mr. -- to the
16 union.17 He was taking his wife with him. It was
18 a social affair.

19 A few days later he came back to me --

20 Q Before we get to the second conversation,
21 did he say anything more about what kind of dinner it was
22 or why he was going?23 A It was a business dinner. I don't recall
24 the specific nature of it. It was a --

25 Q Go ahead.

1 jbjw

Lauer - direct

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2 A It was a union-industry type affair.

3 Q Did he mention whether or not anybody else
4 was going from the company?5 A Yes. It was the company's practice to
6 subscribe to tables, a table, at such a dinner and there
7 were other members of the transportation department that
8 were going with him, and their wives.9 Q Some few days after that, did you have
10 another conversation with Mr. Hachmann when he got back?

11 A Yes.

12 Q Do you recall when and where that took place?

13 A It was in my office in Boston and it was a
14 few days or a week after.

15 Q Was anyone else present at this time?

16 A No.

17 Q Can you tell us, Mr. Lauer, as best you
18 recall, what that conversation was, what Mr. Hachmann
19 said to you and what you said to Mr. Hachmann?20 A Well, Hachmann came to my office and told
21 me that the money he was carrying had been lost or stolen;
22 he was quite upset, quite emotional.23 I asked him to sit down and retract what
24 he had done during the course of his trip to New York.

25 He did that, he told me when he got to New

jbjw

Lauer - direct

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1 York with his wife, he went to his hotel room prior to
2 attending the banquet or dinner, and that he hid the
3 money he was carrying in his jacket which he had in the
4 closet.
5

6 He said after he had gone downstairs he
7 got uneasy about where he had put the money. He went back
8 upstairs and discovered that it was gone. His concern
9 was how to replace the money. He was quite agitated,
10 emotional, and he assumed that he would have to replace
11 it himself.

12 He said that if he didn't make the payment,
13 he would be in very deep trouble.

14 I told Hachmann that I was satisfied that
15 the money had disappeared through no fault of his own,
16 that he was on company business, and that he should
17 replace the money from company funds.

18 Q Did you have any conversation with him
19 about how to replace the money from company funds?

20 A I told him to see Mr. Gibbons.

21 Q Do you recall any more conversation about
22 that?

23 A Hachmann asked me whether he should tell
24 Gibbons what had happened. I told him I wasn't clear
25 on how he and Gibbons accounted for the money and that if

1 jbjw

Lauer - direct

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2 the accounting was accurate, yes, he should explain it
3 and if it wasn't of that nature, he shouldn't unless
4 Gibbons asked him.

5 Q What did Hachmann say?

6 A I don't recall what his response was.

7 Q Did he give you any indication of whether
8 or not he and Gi' ons kept records of this money?

9 A My impression is that they did not.

10 MR. FEITELL: I will object and move that
11 it be stricken.

12 THE COURT: The jury is to disregard Mr.
13 Lauer's impression.

14 Q Mr. Lauer, I would like to go back in time
15 to the fall of 1968.

16 Do you recall that there was an ILA
17 strike during that year?

18 A Yes.

19 Q Did you have any conversations with Mr.
20 Hachmann about making payments to get ships unloaded
21 during that strike?

22 A Yes, I did.

23 Q As best you recall, when and where was the
24 first such conversation?

25 A I don't have any recollection of specific

1 jbjw
2 times and places of conversations.

3 Q Do you recall anyone else being present
4 beside Mr. Hachmann?

5 A No.

6 Q Do you know a man named Charles McCauley?

7 A Yes.

8 Q Do you recall whether or not Mr. McCauley
9 was present at any of these conversations?

10 A He might have been, but I don't recall that.

11 Q What was Mr. McCauley's position in the
12 company at that time?

13 A He was head of the steamship and discharge
14 operations.

15 Q And where did that fit into the general
16 labor relations and dealing with the ILA?

17 A Captain McCauley had the line responsibility
18 and authority over the discharging of fruit and managed
19 those departments and had the line responsibility for
20 labor relations.

21 Mr. Hachmann was staff service to him.

22 Q As best you recall, sir, what was the
23 substance of any conversation you had with Mr. Hachmann
24 about this subject?

25 A I don't recall specific conversations.

1 jbjw

2 Q Can you tell us anything about what
3 you were told by Mr. Hachmann about whether or not pay-
4 ments were made to get ships unloaded during that strike?

5 A Not in specific terms, no.

6 Q In general terms.

7 THE COURT: In other words, can you tell
8 us the substance of what you recall having discussed with
9 him.

10 A Well, the substance was that the company
11 would have to make payments in order to have the ships
12 discharged; that it could be done in the southern ports,
13 if we followed that procedure.

14 Q To the best of your knowledge, sir, did the
15 banana ships get unloaded during that strike?

16 A Yes, they did.

17 Q Mr. Lauer, are you testifying here pursuant
18 to an agreement with the United States Attorney's office
19 that nothing that you say here can be used against you
20 in any criminal prosecution?

21 A Yes.

22 Q And are you also aware of the fact that that
23 understanding gives you no immunity, should you give
24 false testimony here?

25 A Yes.

Mar 1

gw:mg 1

Lauer-Cross

621

2 Q What did he tell you about where he put it
3 in the jacket?

4 A My recollection is he referred to putting it
5 into an inside pocket.

6 Q Did he tell you anything about seeing
7 Mr. Field that night?

8 A Yes.

9 Q Do you recall?

10 A Yes, he said he saw Mr. Field, told him he didn't
11 have the money.

12 Q Did he tell you where he saw Mr. Field?

13 A I don't recall that.

14 Q So your recollection is, as best you can re-
15 call, that he told you that he did see Mr. Field and told
16 Mr. Field that he didn't have the money, right?

17 A Yes.

18 Q Did you ever hear of a man named Chink Henry?

19 A Yes.

20 Q Who was Chink Henry?

21 A He was the vice president of the ILA in the
22 New Orleans area.

23 Q While you were with the company, United Fruit,
24 had Mr. Hachmann ever told you anything about Chink Henry?

25 A Had he ever told me anything about Chink Henry?

1 gw:mg 2

Lauer-cross

2 Would you state the question again?

3 Q Let me put it a different way.

4 Did Mr. Hachmann when he was with the company
5 and still is, but when you were with the company with
6 him, did he ever tell you that he had to give money to
7 Chink Henry?

8 A Yes.

9 Q Did he go into any details about the amounts
10 that he had to give that you can recall?

11 A I recall reference on one occasion that he had
12 to give him a sum of money. I'm not absolutely positive
13 of the amount.

14 Q When did you leave United Fruit?

15 A The first week of January of 1972.

16 Q Did you live up or do you live in the area
17 of Framingham?

18 A Yes.

19 Q Do you live somewhere along the bus route
20 that Mr. Hachmann takes to go to his home in Framingham?

21 A Yes.

22 Q Have you ever met Mr. Hachmann on the bus
23 since the time you left United Fruit?

24 A Yes.

25 Q Did you ever have any discussions with him of

1 gw:mg 3

. Lauer-cross

623

2 any sort on the bus upon bumping into him about whether
3 he or you or both had appeared before the grand jury or
4 were being called before grand juries?

5 A Yes.

6 Q . In 1975 did you become aware that an SEC
7 investigation was starting up with respect to the company
8 in Washington, D. C.?

9 A Yes.

10 Q You heard about that, right?

11 A Yes.

12 Q At or about that time did you ever tell
13 Mr. Hachmann and mention to him in words or substance
14 that if he was approached regarding moneys for payoffs,
15 that he should not forget Chink? Did you ever have a
16 conversation like that with him?

17 A No.

18 Q Never did?

19 A No.

20 Q But you knew when this investigation of the
21 SEC, by the SEC, was starting up, that Hachmann had pre-
22 viously said to you things about Chink, right? You knew
23 it, he had said these things to you, right?

24 A Yes.

25 Q You say you received some subpoenas to appear

1 gw:mg 4

Lauer-cross

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2 before a grand jury in connection with this case, did
3 you?

4 A I was asked to appear before the grand jury.

5 Q When did you receive your first subpoena
6 in that respect?

7 A I first went to the grand jury in September of
8 1976.

9 Q When you went into the grand jury, were you
10 represented by counsel?

11 A Yes.

12 Q When you testified before the grand jury,
13 were you testifying under a grant of immunity?

14 A A form of immunity, yes.

15 Q That had been worked out for you by your
16 attorney with the government, right?

17 A Yes.

18 Q That if you came in and testified and told the
19 truth, you wouldn't be prosecuted for what you said, is that
20 right?

21 A Yes.

22 Q So that even if you incriminated yourself
23 before the grand jury, what you were saying there could
24 never be used against you under that agreement, right?

25 A Yes.

1 gw:mg 5

Lauer-cross

625

2 Q And you were also told, were you not, at that
3 time, that if you lied, you could be prosecuted for perjury,
4 right?

5 A Yes.

6 Q When you went into that grand jury and testi-
7 fied, did you tell the truth or did you lie?

8 A I lied.

9 Q You lied under oath?

10 A Yes.

11 Q You had been told that if you lied under oath,
12 you could be prosecuted, right?

13 A Yes.

14 Q Have you been charged with perjury for what
15 you did before the grand jury the first time you testified?

16 A No.

17 Q You came back later on and testified in the
18 grand jury a second time, right?

19 A Yes.

20 Q And after you did that, did anybody in the
21 government tell you or your lawyer that they were going
22 to forget about a perjury claim against you?

23 A My lawyer told me that the government did not
24 intend to prosecute me or was not interested in prosecuting
25 me.

1 gtjw 3

McAuley - direct

2 DIRECT EXAMINATION

3 BY MR. LEVINE:

4 Q Mr. McAuley, how are you employed?

5 A I am not employed, I am retired.

6 Q Before retirement, for whom did you work?

7 A I worked for the United Fruit Company.

8 Q When did you retire?

9 A I retired in July 1972.

10 Q At that time, what was your position with
the company?

11 A Vice-president of transportation and ship-
building.

12 Q Directing your attention to the period
1968 to 1971, what were your positions with the company?

13 A In 1968 I was assistant vice-president of
transportation and new construction, and in 1971, as I
mentioned a moment ago, I was vice-president of transporta-
tion and shipbuilding..

14 Q What were the responsibilities that you had
as vice-president for shipbuilding and construction?

15 A The company was engaged in the construction
of a fleet of ships in Japan, banana ships, and two
containerships in Spain, and my duties at that time were
to arrange for the completion of the construction of

gtjw 4

McAuley - direct

these vessels and for their ultimate delivery and use in the banana trade.

Q During the period 1968 to 1971, what were your responsibilities with the company?

A Well, in 1968 I was assistant vice-president and I had no responsibilities except to perform whatever duties I was told to take care of by my superior, and when I became the vice-president of transportation and shipbuilding I assumed the full responsibilities for the financial and operational activities of the fleet, including the terminals for discharging bananas in the United States.

Q And did that involve the longshoremen?

A That involved the longshoremen and the discharging of the banana ships.

We also had at that time a general cargo operation, a small unit.

Q In 1968, when you were assistant vice-president for transportation, did the responsibilities of yourself also include the discharge of bananas at different ports?

A Well, the responsibilities, as I mentioned a moment ago, were those of my superiors.

Q Did your duties include --

A But the duties involved in that position

gtjw 5

McAuley - direct

involved -- were connected with the discharging operation.

Q In connection with those responsibilities and duties, did you participate in policy decisions with respect to the unloading of bananas during ILA strikes?

A Yes, I did.

Q Do you know a man Beverly Hachmann?

A Yes, sir, I do.

Q During the period 1968 to 1971, what was his position with the company, if you know?

A I don't recall what his title was, but he was the senior officer in connection with labor relations activities of the company.

Q During the period prior to 1968, what was his position with the company, if you know?

A Well, at sometime prior to 1968, and I am not sure of the date but I think it was in 1965 or 1966, Mr. Hachmann was an assistant to Mr. Neary who handled labor relations in a period before Mr. Hachmann.

Q In 1968, were you aware who Mr. Fred Field was?

A Yes, I was.

Q Who was he?

A Well, I knew that he was an officer of the International Longshoremen's Association. I don't know

gtjw 6

McAuley - direct

what his title was.

Q During the fall of 1968, were you aware of an ILA strike?

A Yes, I was.

Q And did you have a conversation with Mr. Hachmann about Mr. Field and unloading bananas during that strike?

A Yes, I did.

Q Who was present, as best as you recall?

A Well, besides Mr. Hachmann, I think my superior, the vice-president of transportation, was present at the meeting.

THE COURT: Who was that? What was the name of that?

THE WITNESS: Mr. Richard Berry.

Q Anyone else?

A There may have been other people at the meeting. I don't remember. We had so many meetings at that time that I couldn't be sure.

Q What was the substance of the conversation?

A Well --

MR. FEITELL: Could we have a time and place, the date?

THE WITNESS: I beg your pardon?

gtjw 7

McAuley - direct

THE COURT: About when do you think this occurred?

THE WITNESS: The meeting that I am referring to would have occurred just prior to the commencement of the strike.

THE COURT: And where did it take place?

THE WITNESS: In Boston.

Q What was the substance of the conversation?

A Well, the substance was very obviously whether or not we were going to be able to discharge the banana ships in the event of an ILA strike.

Q What did Mr. Hachmann say?

A And Mr. Hachmann told me that the situation looked very grim as to whether or not we would be able to work and that the only hope of working would be if a sum of money could be paid to Mr. Field. The sum of money was to be predicated upon the basis of so much per ship to discharge during the strike.

Q Following this conversation with Hachmann --

MR. FEITELL: I will object to that and move that it be stricken.

THE COURT: You object to what?

MR. FEITELL: I object to that and move

gtjw 8

McAuley - direct

650

that it be stricken.

THE COURT: What is it you are objecting to? I am not clear.

MR. FEITEL: t portion dealing with Mr. Hachmann's surmise. I not reporting anything by way of a conversation that he had with anybody, he is just -- this witness is giving us Hachmann's state of mind.

THE COURT: He is giving you Hachmann's statement. Overruled.

Q Following this conversation with Hachmann, did you have a conversation with him about money being paid to Mr. Field?

A Yes, yes, I remember having a conversation with Mr. Hachmann about it.

Q When was it?

A This was at sometime after the strike was over.

Q Who was present?

A To my knowledge, there wasn't anyone present except the two of us.

Mr. Hachmann told me that he had settled up with Mr. Field.

Q Directing your attention to the fall of

1 gtjw 9

McAuley - direct

2 1971, were you aware of an IIA strike at that time?

3 A Yes, sir.

4 Q Did you have a conversation with Mr.
5 Hachmann at that time about Mr. Field?

6 A Yes, I did.

7 Q Who was present?

8 A I don't recall anyone being present. I
9 don't know whether there was someone there or not.

10 Q You mean other than you and Mr. Hachmann?

11 A That's right.

12 Q As best you recall, what did Mr. Hachmann
13 say to you and what did you say to him?

14 A The conversation that I am remembering at
15 the moment, again, would have transpired just immediately
16 before the commencement of the strike, and the subject,
17 again, was whether or not we would be able to discharge
18 ships in the event that the strike took place.

19 And Mr. Hachmann pointed out to me that he
20 had had conversations with Mr. Field and that the opportunity
21 to work during this strike, if it came off, would be some-
22 what the same as the arrangement that was prevalent during
23 the previous strike, but that the cost of doing it would
24 be substantially more on a per ship basis.

25 Q Do you have any recollection as to what he

gtjw 10

McAuley - direct/cross

said about the cost?

A No. My only recollection is that it would be substantially more. That's as close as I can come to it.

MR. LEVINE: No further questions.

MR. FEITELL: May we have the material that we are entitled to?

MR. LEVINE: There is none, your Honor.

CROSS EXAMINATION

BY MR. FEITELL:

Q Have you ever testified before the grand jury in this case?

A No, sir.

Q All the things that you have said you have said to these Assistant U.S. Attorneys in their office?

A I beg your pardon?

Q You have been in the offices of the Assistant United States Attorneys?

A Yes, I have.

Q And on how many occasions have you been there?

A Well, three times this week and one two previous occasions.

Q Going back to 1968 and 1969, where do you

gtjw 11

McAuley - cross

say that this conversation that you had with Mr. Hachmann took place?

A The conversation that I described a few moments ago?

Q Yes.

A I said it took place in Boston.

THE COURT: Meaning at the headquarters of United Fruit in Boston?

THE WITNESS: Yes, sir, yes, sir. In the office.

Q Who was present there?

A Mr. Hachmann, Mr. Berry, myself, and I don't know whether there were any others there or not.

Q Was Mr. Lauer there?

A I don't know. I don't remember.

Q Well, over the past twenty-five or thirty years before 1968, were you involved with the United Fruit Company?

A How long?

Q How long were you with United Fruit?

A From May 1934.

Q And from the time you were with United Fruit up until the time that this conversation took place, had you lived through many a general cargo strike?

A Yes, I had lived through them; yes.

1 GWJw 1

McAuley - cross

2 Q And you were somewhat familiar with details
3 regarding the unloading of bananas during these strikes?

4 A I don't know what you mean by details.

5 Q Did you know whether or not during these
6 strikes that were called by the ILA at the expiration of
7 particular contracts, whether bananas were, nonetheless,
8 discharged during those strikes?

9 A Bananas were discharged generally during
10 the strikes. I can't say whether they were always dis-
11 charged, but they were generally.

12 Q You can't think of any instances when
13 during these strikes bananas were not discharged; isn't
14 that right?

15 A No, I didn't say that.

16 Q Isn't it a fact that as a matter of practice,
17 over all of these years the southern ports handled the
18 discharge of bananas during strikes?

19 A Generally, but I can't say that they always
20 did.

21 Q You don't know the facts on that?

22 A No, I don't.

23 Q All right.

24 But so far as you know, the bananas were
25 discharged, correct?

gt:mg 2

Gibbons-direct

667

1 of United Brands.

2 Q Do you know a man by the name of Beverly
3 Hachmann?

4 A I do.

5 Q What was his position, if you know, with
6 United Fruit Company in 1968?

7 A He was Director of Labor Relations.

8 Q Did you, from time to time, give Mr. Hachmann
9 cash at his request?

10 A I did.

11 Q Directing your attention to the fall of 1968,
12 did you have a conversation with anyone about giving
13 Mr. Hachmann cash?

14 A I did.

15 Q When was that?

16 A That was in early fall of 1968, my recollec-
17 tion is the month of October.

18 Q Who was present?

19 A Mr. Lauer and myself.

20 Q What was Mr. Lauer's position with the company
21 at that time, if you know?

22 A He was vice president, personnel.

23 Q Where did the conversation take place?

24 A In my office.

gt:mg 3

Gibbons-direct

668

1 Q What was the substance of the conversation?

2 A That sums of money would be needed from time
3 to time and that I was to deliver them to Mr. Hachmann.

4 Q Following that conversation, did you disburse
5 any cash to Mr. Hachmann?

6 A I did.

7 Q During what period of time?

8 A From early fall to-- I'm sorry, from December
9 to approximately February.

10 Q Of what year?

11 A Of 1968 and into early 1969.

12 Q Approximately how many occasions?

13 A Approximately a half dozen.

14 Q On each occasion where did you deliver the
15 money to him?

16 A In my office.

17 Q What were the denominations of the bills that
18 you delivered to him on those occasions?

19 A They would have been \$50 bills.

20 Q Approximately how much money did you deliver
21 to him during that period of time?

22 A I don't recall specifically, sir. My recol-
23 lection says that it was in excess of \$30,000.

24 Q Directing your attention to the fall of 1971,

gt:mg 4

Gibbons-direct

669

1 was there an ILA strike at that time?

3 A Yes, there was.

4 Q Did you give Mr. Hachmann cash during that
5 time?

6 A I did.

7 Q Approximately when?

8 A It started in October and continued, to the
9 best of my recollection, through December.

10 Q Before giving Mr. Hachmann any cash, did
11 you have a conversation with him concerning what he
12 wanted?

13 A I did.

14 Q Where did that take place?

15 A In my office.

16 Q And who was present?

17 A Mr. Hachmann and I.

18 Q What did Mr. Hachmann say to you and what did
19 you say to him?

20 A Mr. Hachmann told me that he would need un-
21 determined amounts of cash over a period of time and that
22 the amount would be large.

23 Q Did he give you a specific amount?

24 A He did not.

25 Q Following that conversation, did you deliver

gt:mg 5

Gibbons-direct

670

1 cash to him?

2 A I did.

3 Q How did you obtain the cash on each occasion?

4 A I got the cash from Mr. Brangwynne, who was
5 the company treasurer.

6 Q If you recall, what were the denominations
7 of those bills?

8 A I'm sorry, I do not recall, but they were not
9 small denominations. I'm sorry I don't recall spe-
10 cifically. They were either 50s or 100s.

11 Q How frequently did you deliver cash to him
12 on these occasions?

13 A My recollection says a half dozen occasions.

14 Q How frequently?

15 A Oh, at intervals of a week or ten days.

16 Q Do you remember any specific date during this
17 period that you paid him?

18 A Yes, I do. I remember two dates-- one date very
19 specifically, another date fairly specifically.

20 Q What is the first date?

21 A The first date was the day following
22 Thanksgiving in 1971.

23 Q What were the circumstances of that event?

24 A It was an office holiday, the office was

closed. I was asked by Mr. Hachmann to deliver some cash to him.

Q Where did that conversation take place?

A In my office.

Q Who was present?

A Mr. Hachmann and myself.

Q What else did Mr. Hachmann say to you?

A That he needed the cash that day, on Friday,

and --

Q What did you do?

A Pardon me?

Q So what did you do?

A It required my calling Mr. Brangwynne and my asking him to come into the office to get the cash for me, despite the fact that the office was closed on that day.

Q Do you recall how much cash was involved?

A Not specifically. It was in the area of \$13,000.

Q Did you receive the cash from Mr. Brangwynne?

A I did.

Q After you received it, what did you do with

it?

A I turned it over to Mr. Hachmann.

Q Following that payment, do you recall delivering

another sum of cash to Mr. Hachmann?

A Yes, I do. This was some time around mid-December of 1971.

I'm sorry I do not recall the precise date.

Q Do you recall how much was involved on that occasion?

A It was in the area of \$15,000.

Q The other payments that you testified to here today that you made during 1971, were they made before these two payments or after these two payments?

A They were made before these payments.

Q Did there come a time when you replaced with the company the cash which you had given to Mr. Hachmann?

A Yes.

Q When was that?

A It was the last week in December of 1971.

Q What were the circumstances of that request for that return of cash?

A The amounts that I had given to Mr. Hachmann were charged to me personally and I was awfully concerned because year-end was coming up and the amounts charged to me personally were approximately the size of my net worth.

I directed the chief financial officer of one of

our subsidiaries in Panama to bring to us \$60,000 in cash with which to reimburse the company for the funds charged against my name.

Q Did he bring this \$60,000?

A He did.

Q Where did he bring it to you?

A He brought it to the Sheraton Boston Hotel, where he gave it to me.

Q What did you do with the \$60,000 in cash?

A I put it in the safe overnight and the following day I reimbursed the company for the amount charged against my name and--

Q Do you have any recollection of how much that was?

A Yes. It was \$57,500.

Q What did you do with the remaining amount?

A I put it in a safe in my office.

Q Mr. Gibbons, did Mr. Hachmann receive all of the \$57,500 which you had received from Mr. Brangwynne?

A No, he did not.

There was one \$2500 payment which had been made to Revere Sugar Company, a subsidiary of United Fruit Company.

Q Directing your attention to early 1972, did you

GTjw

MR. LEVINE: The government calls Patrick Brangwynne.

P A T R I C K B R A N G W Y N N E , called
as a witness by the Government, being first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEVINE:

Q Mr. Brangwynne, how are you employed?

A I'm treasurer of the United Brands Company.

Q Directing your attention to October 1971,
how were you employed?

A I was treasurer of United Fruit division of
the United Brands Company.

Q Do you know a man by the name of Edward
Gibbons?

A Yes, I do.

Q In October of 1971, what was Mr. Gibbons'
position with the company?

A He was the vice-president of finance of the
United Fruit division and I believe also the parent.

Q In October 1971, did you have a conversation
with Mr. Gibbons about cash advances?

A Yes, I did.

gtjw 2

Brangwynne - direct

Q Who was present?

A Mr. Gibbons and myself.

Q Where did that conversation take place?

A In Mr. Gibbons' office.

Q What did Mr. Gibbons say to you and what did you say to him?

A Mr. Gibbons indicated that he was going to have to make some -- probably going to have to make some cash payments. He asked me to increase the petty cash fund by a certain amount and turn that money over to him, he would receipt for it and he would later either return it to me or account for it.

Q How did you obtain -- did there come a time after that conversation when you delivered cash to him?

A Yes, there did.

Q How did you obtain this cash on each occasion?

A I instructed the cashier to increase the cash fund by a certain amount. I either prepared or had prepared proper support documentation to approve the transaction.

Q What form did the money come into you?

A Hundred dollar bills.

Q Do you recall when that conversation was with him?

gtjw 3

Brangwynne - direct

A The first conversation?

Q Yes.

A It was at or just prior to October 8th of 1971.

Q And after that conversation, did you obtain certain amounts of cash for him?

A Yes, I did.

Q Showing you what has been marked Government's Exhibit 5-A for identification, can you identify it?

(Hanging)

A Yes, I can.

Q What is it?

A It is a disbursement account check of United Fruit Company.

Q What is the date on it?

A October 8, 1971.

Q And showing you what has been marked -- excuse me.

How can you identify it?

A I authorized payment. I'm the authorized signature on it.

Q Showing you what has been marked Government's Exhibit 5-B for identification, can you identify that?

(Hanging)

gtjw 4

Brangwynne - direct

A Yes, I can.

Q What is it?

A It's a support documentation for that check.

Q There are three documents in Government's Exhibit 5-B; is that correct?

A That's correct.

Q Would you please explain each one or identify it?

A The first document is a disbursement voucher that triggers the cutting of a check.

The second is the counter-foil of the check.

THE COURT: Counter-foil?

THE WITNESS: I said counter-foil of the check.

A And thirdly is a duplicate carbon of the check as it is typed.

Q And Government's Exhibit 5-B for identification to Government Exhibit 5-A; is that correct?

A That's correct.

MR. LEVINE: The government offers 5-A and 5-B.

Q Perhaps, Mr. Brangwynne, just to make the record complete, is the disbursement check, Government's Exhibit 5-A for identification, and the vouchers and counter-

gtjw 5

Brangwynne - direct

foil in Government's Exhibit 5-B, were they made and kept in the regular course of business?

A Yes, they are.

Q And is it in the regular course of business to make and keep those kinds of records when increasing the petty cash fund?

A Yes, it is.

Q And are those records, the check 5-A and the supporting documents 5-B, made on or about October 8, 1971, which is the date on those documents?

A Yes, sir.

MR. FEITELL: I have no objection.

(Government Exhibits 5-A and 5-B, respectively, received in evidence)

Q Following this conversation on October 8, 1971, when, as best you recall, did you speak with him next regarding cash advances?

A I can't remember the specific date, but within the next week or so.

THE COURT: That is with Mr. Gibbons?

THE WITNESS: That's correct.

Q Just to be clear, the cash that you obtained on October 8, 1971, to whom did you give it?

A I gave it to Mr. Gibbons.

gtjw 6

Brangwynne - direct

719

Q And when you spoke with him next, was it in relation to the same cash advances?

A He asked for additional cash advances.

Q How many times during -- for what period of time did he ask for cash advances?

A From October 8th through either late November or early December of 1971.

Q On approximately how many occasions?

A Seven or eight.

Q Showing you what has been marked Government's Exhibit 5-C and 5-D for identification, first, can you identify Government's Exhibit 5-C?

(Hanging)

A Yes, I can.

Q What is it?

A It is a disbursement account check on United Fruit Company.

Q And the date on it?

A Dated October 14, 1971.

Q And Government's Exhibit 5-D for identification.

A 5-D are the support documents in support of Exhibit 5-C.

Q How can you identify Government's Exhibit 5-C

gtjw 7

Brandwynne - direct

and 5-D?

A I recognize the authorized signature on 5-C of Steven Smith, who worked for me at that time, and I approved the disbursement voucher, Exhibit 5-D.

Q Showing you what has been marked Government's Exhibit 5-E for identification, can you identify it?

(Hanging)

A Yes, I can.

Q What is it?

A It is a disbursement account check on United Fruit Company.

Q The date on it?

A Dated October 22, 1971.

Q The amount?

A \$6,000.

Q Showing you Government's Exhibit 5-F for identification, can you identify that?

(Hanging)

A Yes, I can.

Q What is it?

A It's the support documentation for check Exhibit 5-E.

Q How can you identify 5-E and F?

A 5-E, I'm the authorized signatory on the.

gtjw 8

Branqwynne - direct

check, and I'm the approval party on the support documentation.

Q Just going back for a moment, can you identify the amount on Government Exhibit 5-C?

A It's \$3500.

Q Showing you Government Exhibit 5-G for identification, can you identify that?

(Hanging)

A Yes, I can.

Q What is it?

A It's a disbursement account check on United Fruit Company.

Q Dated?

A October 28, 1971.

Q The amount?

A \$6,000.

Q Showing you Exhibit 5-H for identification, can you identify that?

(Hanging)

A Yes, I can.

Q What is it?

A It's the support documentations for check 5-G.

Q How can you identify them?

qtjw 9

Brangwynne - direct

A I am the approval authority on the support documentation and the signatory authorizing payment of the check.

Q Showing you Government Exhibit 5-I for identification, can you identify that?

(Hanging)

A Yes, I can.

Q What is it?

A It's a disbursement account check on United Fruit Company.

Q Dated?

A November 5, 1971.

Q In what amount?

A \$7,000.

Q And how can you identify it?

A I am the authorized signatory on it.

Q Showing you Government's Exhibit 5-J for identification, can you identify that?

(Hanging)

A Yes, I can.

Q What is it?

A It's the support documentation for that check I just looked at.

Q How can you identify it?

gtjw 10

Brangwynne - direct

A I'm the approval authority on it.

THE COURT: Have we any more to do?

MR. LEVINE: Yes, just a couple.

THE COURT: Is there some shorter way to do it?

If they are the same kinds of documents, can't you simply say they are the same kinds of documents for such and such a date and such and such an amount?

Q Mr. Brangwynne, showing you Government's Exhibit 5-L, M and N -- 5-L, is that support documents for Government's Exhibit K which you have just identified?

THE COURT: I don't think he spoke about K.

MR. LEVINE: I am sorry, your Honor.

Q Showing you Exhibit 5-K and 5-L for identification, what are they?

A They are a disbursement account check and support documents.

Q In what amount?

A \$2,500.

Q On what date?

A November 23, 1971.

Q Showing you Government Exhibit 5-M and 5-N for identification, can you identify them?

qtjw 11

Brangwynne - direct

(Hanging)

A Yes, I can.

Q What are they?

A Disbursement account check and support documentation.

Q What date?

A \$15,500 on December 8, 1971.

Q Mr. Brangwynne, Government Exhibits 5- through 5-N, they all relate to increases in the petty cash fund for those particular dates, do they not?

A That's correct.

Q And were these documents made and kept in the regular course of United Brands' business?

A Yes, they were.

Q Was it in the regular course of United Brands' business to make and keep documents of this kind when increasing the petty cash fund?

A Yes, sir.

Q And were these documents prepared on or about the dates that are reflected on them?

A Yes, sir.

MR. LEVINE: The government offers Exhibits 5-C through 5-N.

MR. FEITELL: May I have a few minutes?

gtjw 12

Brangwynne - direct

THE COURT: Yes.

Are you going to refer to them now anyway?

MR. LEVINE: No.

THE COURT: Why don't you finish the direct examination and we might take a short break to let Mr. Feitell look at the exhibits.

Q Mr. Brangwynne, do you recall any specific date when you delivered cash to Mr. Gibbons during this period?

A Just the October 8th date and the day after Thanksgiving.

Q What happened on that date?

A The day after Thanksgiving, the offices were not open for regular business.

I received a telephone call at home from Mr. Gibbons. He said he needed an amount of cash and wanted me to source it for him.

Q What did you do?

A I proceeded into the office and prepared a check payable to myself, completed the support documentation, negotiated the check and turned the funds over to Mr. Gibbons on his receipt.

Q Showing you Government Exhibit 5-0 for identification, can you identify it?

ctjw 13

Brangwynne - direct

726

(Hanging)

A Yes, I can.

Q What is it?

A It's the check, disbursement account check of United Fruit dated November 25, 1971, in the amount of \$13,500.

Q Showing you Government Exhibit 5-P for identification, can you identify that?

(Hanging)

A Yes. This is support documentation for that check.

MR. LEVINE: The government offers 5-0 and 5-P.

Q Mr. Brangwynne, did you go to the bank on that particular day and obtain the cash yourself?

A Yes, I did.

THE COURT: The day after Thanksgiving you are speaking of?

THE WITNESS: Yes, sir.

Q What form was this money in?

A Hundred dollar bills.

Q What kind of container or package was it in?

A It was placed by the teller in the bank in a bank envelope, a brown bank envelope.

gtjw 14

Brangwynne - direct

Q At the government's request, Mr. Brangwynne, have you brought one hundred fifty bills to court today in a brown envelope similar to the one which you received from the bank the day after Thanksgiving of 1971?

A Yes, I have.

Q May I please have it?

THE COURT: Is it in hundreds?

THE WITNESS: One hundred fifty ones, your Honor.

THE COURT: I see. The ones are the same thickness as the hundreds?

THE WITNESS: I believe so.

MR. LEVINE: Could we mark this Government's Exhibit 5-W for identification.

(Government Exhibit 5-W marked
for identification)

MR. LEVINE: Your Honor, with the Court's permission, we would like to be able to take the money that is contained in it and return it and leave the brown envelope as an exhibit.

MR. FEITELL: We might like to see the money.

THE COURT: Who is going to take the money, did you say?

atjw 15

Brangwynne - direct

When the cross examination is complete,
if there is no reason to keep the money here --

MR. LEVINE: Yes, that is the time for
it, your Honor.

THE COURT: If there is any reason to keep
the money, I am sure there is a way of getting the money
back to the witness some time some day.

1 GWJW 1

Brangwynne - direct

2 Q Mr. Brangwynne, you testified that there are
3 150 dollar bills in Government Exhibit 5-W; is that
4 correct?

5 A That's correct.

6 THE COURT: I take it you counted them?

7 THE WITNESS: Yes, I did, sir.

8 Q That would be some fifteen more than the
9 135 \$100 bills that you received on the day after
10 Thanksgiving in 1971; is that correct?

11 A That is correct.

12 MR. LEVINE: Can I have Defendant's Exhibit
13 A, your Honor?

14 Q Mr. Brangwynne, showing you Defendant's
15 Exhibit A in evidence, could you please take the
16 contents of Government Exhibit 5-W for identification,
17 remove it, place it in Defendant's Exhibit A in evidence
18 and return it to your pocket.

19 MR. LEVINE: The government offers 5-W.

20 MR. FEITELL: No objection.

21 (Government Exhibit 5-W received
22 in evidence)

23 THE COURT: I'm not clear whether the
24 exhibit consists of the envelope only or the envelope and
25 its contents.

1 GUNW 2

Brandywine - direct

2 MR. LEVINE: The envelope only, your Honor.

3 THE COURT: I thought the purpose was to
4 indicate the size of the material you were talking about.

5 MR. FEITELL: Which envelope is being
6 offered?

7 THE COURT: Can't the government substitute
8 150 singles for the trial?

9 MR. FEITELL: The brown envelope is
10 offered into evidence?

11 MR. LEVINE: Yes.

12 MR. FEITELL: I object to that. Where is
13 the white envelope?

14 MR. LEVINE: That's in it.

15 THE COURT: They are both in evidence.

16 Q Did there come a time when the petty cash
17 balance which had been outstanding to Mr. Gibbons' name
18 was reconciled with the company?

19 A Yes, sir.

20 Q When was that?

21 A December 28, 1971.

22 Q What happened?

23 A Mr. Gibbons returned \$57,500 to me.

24 Q What did you do with it?

25 A I deposited it in the company's account.

ewj3

Meltzer - direct

768

1 graduated from Dartmouth College, and I got a masters
2 degree from the Amos Tuck School from the business
3 division of Dartmouth.
4

5 Q Can you tell the jury what positions you
6 held through United Brands Company?

7 A I started out as assistant controller over
8 United Fruit. I became controller of United Fruit. I had
9 the title of vice-president for administration and finance
10 of United Brands.

11 Q What was your position with the company
12 in 1974 in the fall?

13 A Vice-president of administration and finance.

14 Q At that time, did you maintain custody of
15 a company cash fund?

16 A Yes, sir.

17 Q Where was this fund maintained?

18 A In a safe deposit box in the Prudential
19 branch of the New England Merchant's National Bank.

20 Q Do you know Beverly Hachmann?

21 A Yes, sir.

22 Q How did you come to know him?

23 A He was an employee of United Fruit when I
24 went to work for them.

25 Q I would like to direct your attention to the

1 ewjw 4

2 fall of 1974, Mr. Meltzer, and ask whether there came a
3 time when Mr. Hachmann came to talk to you about some
4 cash?

5 A Yes, sir.

6 Q Do you recall when that was?

7 A I believe late September 1974.

8 Q As best -- was there anyone else present?

9 A No, sir.

10 Q What was the substance of the conversation
11 as best you recall; that is, what did Mr. Hachmann say to
12 you and what did you say to Mr. Hachmann?

13 A Mr. Hachmann came into my office and he
14 said, "I am going to need some cash. My friend says this
15 will guarantee several years of labor peace. Do you think
16 I should pay it?"

17 I said to him, "Have you talked to John Taylor
18 about this?"

19 He said, "No, I was thinking of doing that."

20 I said, "Well, I think you should talk to
21 John, this is really an operational matter, and I don't
22 really have any background on this thing."

23 THE COURT: Would you tell us who John
24 Taylor was?

25 THE WITNESS: At the time, I believe he had

1 ewjw 5

Meltzer - direct

2 the title of president of the Agrimarck, which was an
3 effect of the old United Fruit Company. The Agrimarck
4 group of United Brands.

5 Q Do you recall any further conversation at
6 that time?

7 A Mr. Hachmann said "These guys are getting
8 greedy. It's more money than I like."

9 I believe I said to him, "How much are you
10 talking about?"

11 He gave me an amount which was no less
12 than \$35,000 and no more than \$45,000. I said to him --

13 THE COURT: Do you mean he put it that way
14 or --

15 THE WITNESS: No, he gave me an amount.
16 I don't recall the exact amount. It was between 35 and
17 45,000. I said to him, "I don't have that amount of
18 cash available."

19 He said, "Well, I believe we will be able
20 to pay it in three monthly installments."

21 I think I concluded the conversation by
22 saying, "Why don't you talk to John and we'll talk again
23 about it."

24 Q Do you recall any further conversation at
25 that first meeting with Mr. Hachmann about the cash?

1 ewjw 6

Meltzer - direct

2 A At one point, I believe he mentioned the name
3 Freddy, but I don't recall in what context he used
4 that.

5 Q When he mentioned the name Freddy, who did
6 you understand that to be?

7 A The only Fred that I had heard mentioned in
8 connection with --

9 MR. FEITELL: I will object to this, your
10 Honor.

11 THE COURT: Sustained.

12 Q Did you know a man named Fred or did you
13 know of a man named Fred?

14 A I had heard of a man named Fred Field.

15 Q Who did you know him to be?

16 A An official in the longshoremen's union.

17 Q Was Mr. Hachmann talking to you about the
18 longshoremen's union?

19 MR. FEITELL: Objection.

20 THE COURT: Overruled.

21 A He did not mention the longshoremen's union.

22 Q Did there come a time after you talked with
23 Hachmann that you talked with Mr. Taylor?

24 A Yes, sir.

25 Q Do you recall when that was?

ewjw 7

Meltzer - direct

1
2 A Two or three days after I talked to Mr.
3 Hachmann.

4 Q Where was that conversation?

5 A In Mr. Taylor's office.

6 Q Was anyone else present?

7 A Mr. Hachmann.

8 Q As best you recall, what was that conversa-
9 tion about, tell us what Hachmann said, what you said
10 and what Taylor said?

11 A I went into Mr. Taylor's office and I believe
12 Mr. Hachmann was already in there ahead of me. I said to
13 Mr. Taylor, "Has Hachmann told you that he wants some
14 cash?"

15 Mr. Taylor said yes, and I said, "Should
16 I give it to him?"

17 He said yes. Then I believe I said I will
18 have to tell Mr. Black that I am going to do this.

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1 MBjw 1

2 Q Who was Mr. Black at that point?

3 A He was chairman of the board and president
4 of United Brands.

5 Q Do you recall any further conversation at
6 the meeting with Taylor or Hachmann?

7 A No, sir.

8 Q Did there come a time in the fall of 1974
9 when you delivered some cash to Mr. Hachmann?

10 A Yes, sir.

11 Q Do you recall when the first occasion was?

12 A I believe it was late September, possibly
13 early October. I don't remember the exact date.

14 Q Where did you get that cash from?

15 A From a safe deposit box.

16 Q And was that a box maintained in your name?

17 A Yes.

18 Q Showing you Government Exhibit 6 for
19 identification, can you identify that, sir?

20 A It's a record of access to safe deposit
21 box in the New England Merchants National Bank.

22 Q To your safe deposit box?

23 A Yes, sir.

24 Q And how can you identify that?

25 A It has my signature on it.

1
2 Q And showing you 6-A, is that a copy of
3 Government Exhibit 6?

4 A Yes.

5 Q There seems to be something -- something
6 on the copy that's not on there, just some initials.
7 That's scratched out. Very well.

8 MR. WING: Your Honor, the government would
9 offer the copy 6-A into evidence in order to be able to
10 return the original from whence it came. I will show
11 both to Mr. Feitell.

12 THE COURT: All right.

13 (Pause)

14 MR. FEITELL: I will object to the copy,
15 Judge, because the copy has been gone over by somebody
16 first of all, and secondly, it's not being properly
17 qualified as a record. We have the original here. I
18 would object to the copy in any event.

19 THE COURT: Does the record belong to you
20 or does it belong to the bank?

21 THE WITNESS: It belongs to the bank, I
22 believe, sir. It does not belong to me.

23 THE COURT: That is your signature?

24 THE WITNESS: Yes, sir.

25 MR. WING: If Mr. Feitell has no objection

1 mbjw

Meltzer - direct

775

2 to the original, then we'll offer the original.

3 MR. FEITELL: I have no objection.

4 THE COURT: All right.

5 (Government's Exhibit 6 received
6 in evidence)

7 THE COURT: The original can be returned.

8 Q Mr. Meltzer, does this particular document,
9 this record of access, indicate the date and time when
10 you went into that safe deposit box?

11 A Yes, sir.

12 Q And can you tell us by looking at that
13 card when it was that you went into the box to get the
14 first installment of cash to be paid to Hachmann in the
15 fall of 1974?

16 MR. FEITELL: I will object to this, your
17 Honor.

18 THE COURT: Overruled.

19 A October 7, 12:52.

20 Q 12:52 p.m., and how much money did you get
21 on that occasion?

22 THE COURT: That will be shown by the card,
23 I take it?

24 MR. WING: No, it won't.

25 THE WITNESS: The amount?

1 MBJW

Meltzer - direct

2 THE COURT: Yes.

3 THE WITNESS: Right.

4 THE COURT: Do you remember how much it

5 was?

6 THE WITNESS: \$10,000.

7 Q In what form was that?

8 A \$100 bills.

9 Q What kind of container if any did you put
10 it in or carry it in when you took the money out of the
11 box?

12 A A white business size envelope.

13 MR. WING: Mr. Feitell, do you have your
14 exhibit handy?

15 A With an elastic band around it.

16 Q An envelope approximately the size of
17 Defendant's Exhibit A which I am holding up?

18 A Yes, sir.

19 Q Did you give that cash to Mr. Hachmann?

20 A Yes, sir.

21 Q When did you give it to him in relation
22 to when you took the money out of the box?

23 A Within minutes. Less than an hour.

24 Q Did there come a time in October, after
25 October 7th when you received some additional funds to

1 mbjw

Meltzer - direct

2 supplement the money in the safe deposit box?

3 A Yes, sir.

4 Q And around that time, did you have another
5 conversation with Mr. Hachmann?

6 A Around that time, yes, before I received
7 the additional funds, I believe I told Mr. Hachmann
8 that I would have some more cash available within a week.

9 Q And what did Mr. Hachmann say to you?

10 A I believe he said "Let me know when you
11 have it."

12 Q Did you let him know when you had it?

13 A Yes.

14 Q When did you get that additional money, Mr.
15 Meltzer?

16 A October 18th.

17 Q Did there come a time when you gave Mr.
18 Hachmann cash for a second payment?

19 A Yes, sir.

20 Q Do you recall when that was?

21 A It was either Friday, October 18th, or the
22 following Monday, which would be October 21st.

23 Q And does the card that you have in front
24 of you reflect entries into your safe deposit box
25 on both those dates?

mhjw

Meltzer - direct

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A Yes,

Q What was the time on the 18th?

A 2:20 in the afternoon.

Q What was the time on the 21st?

A 9:53 in the morning.

Q Can you tell the jury what was the amount of this second payment that you gave to Mr. Hachmann?

A \$10,000.

Q Was that also in \$100 bills?

A Yes, sir.

Q Did there come a time when you delivered a third installment to Mr. Hachmann of the cash which he requested back in late September?

A Yes, sir.

Q Do you recall when that was?

A November 21st.

Q Where did that money come from?

A \$10,000 of it came from Mr. Brangwynne, the treasurer.

MR. FEITELL: I will object unless he knows of his own knowledge.

THE COURT: You mean that he gave you the ten?

THE WITNESS: Yes, sir.

mbjw

Meltzer - direct

779

THE COURT: All right.

Q Was there any more money delivered on that occasion?

A Yes, \$5,000 came out of the same safe deposit box.

Q Is there an entry on the safe deposit box record of access you have in front of you for November 21st?

A Yes, sir.

Q At what time?

A 9:28.

Q A.M. or P.M.?

A A.M.

Q So the total amount of money you delivered to Mr. Hachmann on that occasion was \$15,000?

A Yes, sir.

Q In what denomination?

A \$100 bills.

Q Do you know where Mr. Brangwynne got the \$10,000 from that he gave to you?

MR. FEITELL: I will object unless he knows of his own knowledge.

THE COURT: O Do you know is the question. Not did he tell you.

THE WITNESS: I know when \$10,000 was added

1 mbjw Meltzer - direct

2 to the corporate petty cash fund.

3 THE COURT: Do you know when it was you
4 say?

5 THE WITNESS: Yes, sir.

6 MR. FEITELL: Objection and move to strike
7 that as not responsive.

8 THE COURT: Sustained.

9 Q Do you know where the money came from on
10 November 21st when Mr. Brangwynne gave it to you?

11 A Yes, sir.

12 Q Where?

13 A From the corporate petty cash fund.

14 MR. FEITELL: I will object and move that
15 that be stricken, Judge. It's apparent that that is
16 hearsay.

17 THE COURT: How do you know that?

18 THE WITNESS: Mr. Brangwynne reported to
19 me at the time.

20 THE COURT: I told you not to tell us
21 what you were told, only if you actually witnessed it.

22 I will instruct the jury to disregard the
23 statement that the money came from the petty cash fund.

24 I am not saying it's true or not true. He does not know.

25 Q Showing you Government Exhibit 5-S in

1 mbjw

Meltzer - direct

781

2 evidence, can you tell us what that is, Mr. Meltzer?

3 A It's a page from the petty cash book.

4 Q Of United Brands?

5 A Yes, sir.

6 Q And does that reflect any entry relating
7 to \$10,000?8 MR. FEITELL: I will object to this, your
9 Honor.

10 MR. WING: It's in evidence, your Honor.

11 MR. FEITELL: If it's in the evidence,
12 he is just reading from another record of the company.
13 He didn't originate it.14 THE COURT: Let me see the record. If
15 it speaks for itself, all right. If it doesn't I will
16 ask the witness to elaborate.

17 What is your question?

18 MR. WING: Whether it refers to a \$10,000
19 transaction on November 21st.20 THE COURT: It does, but it does not need
21 an expert to tell us that. You can read it yourself.22 MR. WING: Government Exhibit 5-S, ladies
23 and gentlemen, the second item reads across "11/21,
24 reduction in cash, \$10,000." The \$10,000 is under the
25 credit column.

1 mhjw

Meltzer - direct

2 Q Mr. Meltzer, can you explain what that
3 means?

4 MR. FEITELL: Objection.

5 THE COURT: Overruled. Will you explain
6 what it means?

7 A It means that the balance in the petty cash
8 fund was reduced by \$10,000.

9 Q Thank you.

10 Mr. Meltzer, are you testifying here today
11 pursuant to an understanding with the United States
12 Attorney's office that nothing you say can be used against
13 you in any criminal prosecution?

14 A Yes, sir.

15 Q In addition, have you also received immunity
16 in connection with information that you have furnished
17 the United States Attorney's office concerning another
18 investigation presently underway involving the payment
19 by the United Brands Company to the Finance Minister of
20 Honduras.

21 A Yes, sir.

22 Q Do you understand that neither of those
23 agreements provide you any immunity to give false testimony
24 on this witness stand?

25 A Yes, sir.

nhjw

Meltzer - direct/cross

MR. WING: I have no further questions.

CROSS EXAMINATION

BY MR. FEITELL:

Q Mr. Meltzer, my name is Lawrence Feitell and I am the attorney for Mr. Field.

This safe deposit box that you took out at this particular bank, you took it out in your own name?

A Yes, sir.

Q May I trouble you for the sign-in card and the other item you have there?

(Papers handed to Mr. Feitell)

Q Thank you.

When did you open up that box?

A I believe it was in the summer of 1973; I believe late June or early July.

Q Did you have any other boxes in your own name at that time?

A No, sir.

Q At the bank?

A No, sir.

Q Or any other bank?

A Not at that time, no, sir.

Q And did the corporation, United Fruit, keep a box, a safe deposit box, at this particular bank at that

1
2 time, '73?

3 A Not in the name of the company.

4 Q In whose name?

5 A To my knowledge, I believe my predecessor,
6 Mr. Gibbons, had a box in his name.

7 Q Mr. Gibbons had a box in his own name?

8 A I believe so.

9 Q And incidentally, this box is not for and
10 on behalf of the company, it's your own individual box
11 in the name of Donald Meltzer, right?

12 THE COURT: You mean it doesn't say for
13 and on behalf of the company.

14 Q Well, it doesn't say for and on behalf,
15 does it?

16 A No, sir.

17 Q And Mr. Gibbons, your predecessor, had a
18 box before at the same bank in his own name?

19 MR. WING: I object to the relevance, your
20 Honor.

21 THE COURT: Overruled. The answer is yes?

22 A I know he had a box. I believe it was in
23 his own name.

24 Q Well, did you ever speak to him about his
25 safe deposit box at that bank?

1 mbjw

2 A He spoke to me about it.

3 MR. WING: I object to the relevance.

4 THE COURT: I will allow some further
5 questions. Go ahead.

6 A Yes, sir.

7 Q He told you about his box and that's how you
8 came to open up your box; is that right?

9 A Yes.

10 Q In other words, before he left the company,
11 he gave you some instruction to get a box in your own
12 name, right?

13 A Yes, sir.

14 Q And he explained to you, isn't it a fact,
15 that this was a box that was going to be used for company
16 funds but it would be in your name?

17 A Yes, sir.

18 Q Is that right?

19 A Yes, sir.

20 Q Now, when you opened up this box in June,
21 in or about -- well, take a look at this first entry
22 here, June 21, 1973.

23 Is that the date you opened up the box or
24 did you open the box at some other time but just go there
25 for the first time on June 21, 1973.

mbjw

Meltzer - cross

1 A I believe that's the date I opened it, sir.

2 Q You signed to get into the box, right?

3 A Yes, sir.

4 Q So did you go to the box that day?

5 A Yes, sir.

6 Q To put something in?

7 A I did not put anything in but I did take
8 the box out.

9 Q Who are the authorized signatories to enter
10 that box, anybody but yourself?

11 A Mr. James Powers.

12 Q Who was he?

13 A He succeeded me as controller of United
14 Brands.

15 Q Well, when you went to open up this box
16 and you had your conversation with Mr. Gibbons, what
17 did Mr. Gibbons tell you that the money in this box was
18 all about?

19 A He told me --

20 MR. WING: I object to the relevance.

21 THE COURT: Overruled.

22 A He told me at various times people in the
23 company would come to me and ask me for cash, that when
24 they did that, I should inform Mr. Black, who was the
25

ewjw 2

Taylor - direct

Q How long have you known Mr. Hachmann?

A I have known Mr. Hachmann, I would think, ten to fifteen years.

Q How did you come to know him?

A He is employed by United Brands in a position of labor relations.

Q Do you know a man named Donald Meltzer?

A I do.

Q How did you come to know him?

A He was chief accountant for a while, and then subsequently vice-president, finance, for United Brands.

Q In 1974, sir, what was your position with the company?

A I was president of United Fruit Company.

Q Directing your attention to the fall of 1974, did there come a time when you had a conversation with Mr. Hachmann relating to a man named Fred Field?

A I did.

Q As best you recall, when did that conversation take place?

A In the fall of 1974, I can't give the date.

Q Was anyone else present?

A No.

ewjw 3

Taylor - direct

Q Can you tell us, as best you recall, what Mr. Hachmann said to you and what you said to Mr. Hachmann?

A Yes. We discussed the situation as far as the union negotiations for the discharge of our cargoes in a general way. He updated me on that.

Then he gave me the information that if we were to agree to make a payment to a union official, we could look forward to three years of peace for the discharge of our ships.

I asked him how much was involved in this payment and he said \$35,000. I asked him to whom he would make this payment and he said Freddy Field.

Q Did you know of Fred Field at the time?

A I had never met him, but I know of him, yes.

Q What did you know of him?

MR. FEITELL: I will object to this, your Honor.

Q Who did you know him to be?

THE COURT: I will allow you to answer that.

A He was, to my knowledge, comparatively, senior officer of the union, the ILA.

Q Do you recall any further conversation with Mr. Hachmann at that time?

ewjw 4

Taylor - direct

A No.

Q Was there any discussion as to whether or not the money would be paid at that time?

MR. FEITELL: Objection, leading.

THE COURT: Overruled. Go ahead.

A Would you repeat the question, please?

Q Was there any discussion about whether or not the money should be paid at that time?

A Yes, there was. There was a small discussion as to whether it was the right thing to do or whether it wasn't.

I asked Mr. Hachmann what would be the problem if we didn't pay it. He said it could lead to a good deal of trouble.

Q Did you, in words or substance, indicate to Mr. Hachmann that you thought the money should be paid?

A I did.

Q After discussing the matter with Hachmann, did you have a conversation with Donald Meltzer about the same subject?

A Yes, he came to see me. I believe it was the next day.

Q Do you recall whether anyone else was present

ewjw 5

Taylor - direct

at that time?

A No.

THE COURT: Do you mean no, no one was present?

THE WITNESS: No, no one else was present, sir.

Q As best you recall, what was that conversation?

A He asked me had I spoken to Mr. Hachmann about the payment to the union, and I said yes, I had.

He asked me if it would be in order for him to make this payment or at least to give the money to Mr. Hachmann. I said yes, I believed that it was the right thing to do.

Q Mr. Taylor, are you testifying here today pursuant to an agreement with the U.S. Attorney's office that nothing you say here can be used against you in any criminal prosecution?

A No, sir, not that broad.

Q Well, how broad is it?

A My understanding is that at this particular case, what I am saying here today cannot be used against me in any subsequent court.

THE COURT: Proceeding.

pqjw 13

Murray - cross

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the one that was just handed, was mailed from Florida.

The issue in 7206 is going to be not where it was returned but where did the taxpayer sign it.

The two taxpayers it will turn out, very likely, in this case signed --

THE COURT: That's the issue. Of course your questions are perfectly proper. I'm confused by it.

MR. LEVINE: Your Honor, the government maintains, particularly with respect to the 1974 return which was filed in the Manhattan district, that is in the Southern District of New York, and whether it was signed, sealed, delivered, prepared, thought about anywhere else, venue is proper in the Southern District of New York.

With respect to the 1971 return, it is clear that it was not filed in Manhattan because the envelope attached to it is addressed somewhere else, Andover Service Center to be exact.

With respect to that particular return, the continuing venue statute has application to 7206. Where it was prepared is relevant.

MR. FEITELL: It's not continuing venue.

THE COURT: Since I have not been advised in advance of this question, I don't want to make an error of excluding anything that might be relevant, I will

pgjw 14

Murray - cross

858

allow the question.

But I will expect probably with regard to '74 to instruct the jury it makes no difference whatsoever where the documents --

MR. FEITELL: There are things that have to be established with regard to a 7206 filing: Where did the taxpayer sign it? Where did the taxpayer mail it? Not alone where the tax return --

THE COURT: I want authority on it.

MR. FEITELL: I have cases.

(In open court)

(Record read)

Q Can you tell from examining the return where it was mailed?

A From the actual return? I could tell from the envelope that's attached.

Q Yes.

A The postmark says Miami, Florida.

Q Do you have any independent information as to where the return was signed?

A No, sir, I have no information as to where the return was signed.

Q This return was mailed where? Where from Florida?

1 pgjw 15

Murray - cross

2 A It was mailed to -- the envelope is
3 addressed to Internal Revenue Center, North Atlantic
4 Region, Andover, Massachusetts, 01812.

5 Q So far as you knew, the return by mail
6 went directly from Florida to Massachusetts, right?

7 A I have no knowledge of the postal system,
8 sir.

9 Q Do you have any indication that this return
10 came through the State of New York?

11 A I have no knowledge of the routing of the
12 postal system.

13 Q This document locator stamp on top of the
14 '71 return, that bears the No. 13 as the first two
15 digits, isn't it a fact that the No. 13 is given as a
16 part of the document locator number because of the
17 home address listed, 345 East 56th Street?

18 A Correct.

19 Q That's why it gets No. 13, right?

20 A Correct.

21 Q In the event of course so if anything
22 happens in connection with the return, it's the problem
23 of the 13 District, right?

24 A Correct, sir.

25 Q The 13 District is your district as you have

EWjw 1

Murray - cross

Q This 1971 return was received on June 19, 1972 in Massachusetts, is that not so?

I am asking you to address yourself to the stamp on the face of it.

A Yes, sir, that is so.

Q With respect to the 1974 return, that also carries the No. 13 on the locator number, it's the first two digits, rights?

A That is correct, sir.

Q Mr. Field's residence was in the 13th District, according to that return, right, 345 East 56th Street?

A Yes, sir.

Q Whether this was mailed --

Can you tell how this got into the hands of the IRS, whether it was personally delivered or by mail?

A No, sir, I have no knowledge as to that.

Q In 1974, specifically at or about April of 1975, where were 13th District returns going to? Were they going up to Massachusetts or were they going out to Holtzville?

A Holtzville Service Center; Brookhaven Service Center at Holtzville.

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Murray - cross

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The papers were marked received at the IRS June 19th, so, because it was after the 15th of June, the witness called that delinquent. That doesn't mean that it wasn't mailed properly on the 15th of June, nor is there any charge in this case that Mr. Field was delinquent in mailing or filing his taxes.

The charge is that he didn't show on his return monies he received from United Brands.

MR. FEITELL: You said that you have to make an application to get an extension?

I don't think that that's true anymore. It's automatically given.

THE COURT: What difference does it make. I am not purporting to give a course on tax law, I am just trying to move along.

Q Getting over here now to the 1974 return, there is nothing on this return to show where it was mailed from, right?

A Correct, sir.

Q The 1971 return shows Florida, right?

A Correct, sir.

Q This one shows nothing, 1974, right?

A Correct, sir.

Q And it was received out in Moltsville, so

A Mr. Field is the man who is sitting right opposite here in the grey suit.

MR. WING: May the record reflect the witness has correctly identified the defendant?

THE COURT: Yes.

Q Since 1964, Mr. Rhodes, have you prepared Mr. Field's tax returns for him?

A To the best of my recollection, yes.

Q Since about that time, have you also done accounting work for one or more ILA institutions that are affiliated with Mr. Field?

A Basically I became the accountant for Local 856 to do the accounting work there and that's how I met Mr. Field.

Q Does Mr. Field have some position with Local 856?

A He is secretary and treasurer of Local 856.

Q Mr. Rhodes, specifically, did you prepare the tax returns for Mr. Field for the years 1971 and 1974?

A Yes, I did.

Q Can you tell us as best as you can recall, exactly what you did in connection with preparing the returns for those two years?

A I can answer this only in generalities in

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Rhodes - direct

connection with the preparation of all his tax returns.

At the beginning of a year my office calls the office of Mr. Field and asks that the records pertaining to the preceding calendar year, pertaining to tax matters, are sent to my office.

Upon receipt of this tax data -- they consist of check stubs, cancelled checks, and vouchers -- upon receipt of that tax data we look over the records and segregate them into what we feel and think is a proper tax deduction or what we think is a private expense.

We then write up on working papers all these items listing check numbers, dates, payees, and allocate them by items.

Then there are questions which come up whether items should be considered either a tax deduction or a private expense. For those items we get in touch with Mr. Field, try to reach him if possible and get an answer from him so we can decide whether they are a tax deduction or not.

Thereafter, we draw up a tentative return and ask Mr. Field to come to the office and review with us the tax return.

When we have finalized and have his answer to

it, we will have the tax return typed and the completed return is thereafter signed by me and sent to Mr. Field's apartment in New York together with a copy for his file.

Q Does Mr. Field actually come to your Manhattan office to go over the return with you and your associate?

A Yes.

Q In the course of preparing these returns, do you ask Mr. Field what income he has for that particular year?

A No.

Q Do you receive any documentation showing you what he received during the year?

A He sent us all the data pertaining to his income and after we have everything in our office or believe that we have everything in our office we ask him: "Is this all?" And the answer is yes.

Q Was that particularly true for the years 1971 and 1974?

A That has been a routine.

For the year 1974 I want to mention there was a tax examination. In each examination the agent asked: Does Mr. Field have income from savings accounts and securities?"

The answer has been always no.

Q Mr. Rhodes, I would like to show you Government's Exhibit 8-A in evidence, which is the tax return for the year 1971.

Can you identify that document, sir?

A I identify my signature.

Q Is that the tax return for Mr. Field for the year 1971 that you and your office prepared?

A I would say yes.

Q Referring to this signature over here, do you recognize that signature?

A It appears like Mr. Fred Field's signature from my past experience.

Q Showing you Government's Exhibit 8-B, which is the tax return for 1974, can you identify that document?

A This is my signature.

Q Is that the tax return you prepared?

A It appears to me that that is the tax return.

Q That you prepared for Mr. Field for that year?

A Yes.

Q Do you recognize this signature over here?

A It appears as his signature too.

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MR. WING: That's correct, your Honor.

MR. FEITELL: Satisfactory, your Honor.

THE COURT: The purpose of that stipulation is so that Mr. Morgan will not have to testify here and we will not have to spend the time for that purpose.

MR. WING: On the basis of that testimony, the government offers 1-X and 1-Y in evidence.

MR. FEITELL: No objection.

(Government's Exhibits 1-X and 1-Y
received in evidence)

MR. WING: The government rests.

THE COURT: Ladies and gentlemen, I think I will have to ask you to return to the jury room briefly. The government has just completed the presentation of its case. That requires a review of certain of the legal aspects of the case at this time.

(Jury excused)

MR. FEITELL: Under Rule 29 of the Federal Rules of Criminal Procedure, the defendant most respectfully makes application for a judgment of acquittal with respect to each and every count of the indictment.

Would your Honor want me to particularize?

THE COURT: It's not necessary for me. If you want to make special arguments as to any particular

1 ewjw 13

2 count, I wish you would.

3 MR. FEITELL: Yes, I would.

4 With respect to Count 1, the so-called
5 racketeering activity count, I would like to point out
6 that there has been absolutely no proof in this case
7 that the alleged conduct of Mr. Field was in any way
8 authorized by the ILA or any other union.

9 Taken at its best and even if believed, this
10 would show no more than that Mr. Field, on some frolick
11 and detour of his own, accepted certain monies.

12 It certainly doesn't indicate that this
13 was the pattern of activity which the union conducted
14 its business through, because there was a failure to
15 show the complicity of any other union member on or
16 about the same level with Mr. Field in this alleged
17 conduct.

18 By the defendant's plea of not guilty, of
19 course, he denies it in its entirety anyway. Without
20 prolonging this, this pattern of racketeering activity
21 which is alleged as the means by which the union conducts
22 its business has not been substantiated. All that has
23 possibly been shown, if the government's proof is believed,
24 is that certain monies were accepted.

25 THE COURT: Isn't this -- I have

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a vague feeling of deja vu here.

It seems to me that you are repeating now, are you not, the motion that you made earlier this year with regard to a lot of --

MR. FEITELL: That was a motion before trial.

Yes, your Honor, you are quite right. Now that we have a developed record on this, we don't see any complicity or any problem with any other person in the union above or below him, and we have no indication from any other source that this was the way this union does its business.

pgmb 1

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THE COURT: I don't understand the indictment to charge what you said has not been proven. I understand the charge to charge that it was the defendant who conducted the business of the union for a pattern of racketeering activity, and not that the union conducted its own business that way.

That is your construction of the indictment, Mr. Wing?

MR. WING: Yes.

THE COURT: I therefore believe that, as the indictment reads, the argument as you have pressed it is not relevant. I think it is the same argument you pressed before the trial, and which I rejected as a matter of law at that time.

MR. FEITELL: I have other arguments. I will not press them. Let the record indicate that I have not exhausted myself. I will save them.

THE COURT: I would have little fear of that.

MR. FEITELL: Counts 2 through 5, I will turn to those now.

Each one of the dates in this indictment, the counts are broken, 2, 3, 4, and 5, you have different dates. The testimony of the witness is that he was never sure of any particular date or any particular amount.

THE COURT: Again, the indictment says

pgmb 2

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approximate date. I think that's all the law would require in the nature of proof. I agree with you, that's a good argument to make to the jury. It's certainly not an unimportant point. I think a reasonable juror could beyond a reasonable doubt find that the defendant was guilty insofar as dates and amounts indicate.

MR. FEITELL: With respect to count 6, the conspiracy count, I urge that there is wholly insufficient testimony to indicate the defendant was involved in a conspiracy with anybody to do anything; that at best, if believed beyond a reasonable doubt, the defendant seemed to convince this Mr. Hachmann, who is ready to be convinced, apparently, that certain things would happen unless the company paid some money. I urge again that Hachmann, that various employees of the company that testified here, were not co-conspirators with him; that by no stretch of the imagination did they plan and plot this. Apparently, according to their proof, the author of this was Mr. Field. They are the alleged victims. Who did Mr. Field conspire with, with his victims? That's sheer nonsense.

THE COURT: The answer to that is yes.

MR. WING: That's what the proof shows.

THE COURT: I think it's perfectly possible for

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pgmb 3

a person to conspire with his victims to their disadvantage.

MR. FEITELL: But let me take this a step further and talk about the cases that talk about stake in the venture.

The venture is Fred Field's collecting moneys from that company. Their interest in having a continuation with shipping is not a part of the venture or stake in the venture. The venture in terms of the stake in the venture that anybody would have would be in the financial aspect of it. These people had no interest in the financial aspect, if their testimony is believed. What is the scope --

THE COURT: A conspiracy to violate a peace in 1974 and a conspiracy to see to it that bananas would be unloaded in 1968, 1969, and 1971. I believe the testimony is such that a reasonable juror could find the defendant guilty of that charge, and certainly of the charge relating to Section --

MR. FEITELL: All right, your Honor.

Passing on to the two 7201 counts and the 7206 subdivision 1 count, I most respectfully urge your Honor that venue and jurisdiction of this court was not established. It is not by any means clear, certainly there is not even a prima facie case, that these returns were signed in this district or that they were mailed

pgmb 4.

in this district, or that they were physically accepted and filed in this district. I have submitted to your law clerk various authorities on this.

I think my strongest position with respect to the 7206 subdivision 1, which is a false making and false filing statute, which according to the cases, does not indicate continuity of course of conduct, so that the government could save itself from this dilemma by saying it's a continuing crime and some part of it took place in New York County because Mr. Rhodes looked at some papers and rew up certain papers. That's not what the 7206 count is about. Arguably, that 7201 count, which is a different section, I will concede for the sake of argument that under the Slutsky case, one might make an argument, but I am not abandoning the argument, even what happened in this case was not enough under 7201.

They talk about, in the Slutsky case, a continuing crime. It seemed to indicate that even some minimal conduct in the district tending to advance the commission of a crime would be enough to supply venue or jurisdiction; but clearly the Slutsky case and the other cases I have given, Gross, to your law secretary, indicate that it's a different situation with respect to 7206. That's a more narrowing crime and the proof has to be much more

pgmb 5

Raspberry - direct

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particularized and the cases relating to continuity of the commission of crime don't relate to that count.

THE COURT: As you know, I indicated to counsel earlier this morning that I have not considered this question before, and I want to study the matter. It's almost purely a question of law, I believe.

Mr. Wing and Mr. Levine have submitted a memorandum. Is there anything you want to add to that memorandum at this time?

MR. WING: Mr. Levine is the expert.

MR. LEVINE: No, your Honor.

THE COURT: I will reserve decision on counts 7 through 10.

MR. FEITELL: I need about two minutes, and I am ready to go, Judge.

THE COURT: Very good. Short recess.

(Recess.)

In open court, jury present.)

MR. FEITELL: The defense calls John H. Raspberry.

JOHN H. RASPBERRY, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FEITELL:

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It's part of one transaction, just broke it up. That does not mean a pattern. I would view it as independent transactions related to each other.

THE COURT: A cluster of transactions, let's say.

MR. FEITELL: Not a running payoff. We have the same problem with Request 7 which is -- we will clear that up. "Committed at least two of the acts with which he is charged in Count 1." That's the third line.

THE COURT: I do add a summation that there must be at least two of these acts of which only one can have occurred prior to December 10, 1971, and that there must be a pattern.

If, on my actual instructions, you find there is a clarification necessary, I will be generous in my attitude on the subject because I think it's a confusing statute.

MR. FEITELL: I am asking for a special verdict. If they do find payments, I would like to know what payments they found. I could test that on appeal as to whether or not, as a matter of law --

THE COURT: I am not going to ask for a special verdict.

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MR. FEITELL: How is the Appellate Court going to know which payments --

THE COURT: I don't know. I don't know how the Appellate or the Trial Court knows how the jury decides matters in any situation.

MR. FEITELL: We have to know what the dates were, which payments that they found occurred. That's the only way we can determine whether or not those are pattern-like payments.

THE COURT: I don't think that's truer of this crime than it is of any other crime where they have various elements that they have to find. The Court is never obligated and it certainly doesn't normally ask, with regard to each element of the crime, what the findings of the jury are. I am not going to do it here.

MR. FEITELL: What if they find two payments before '71?

THE COURT: You will just have to hope that they understand my instructions.

MR. WING: They are presumed to follow the Court's instructions.

THE COURT: Can we move along?

MR. FEITELL: I object to that language which intends to become factual on page 2 of Request No. 7

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because I spoke to Mr. Wing. Wilful conduct is necessary with regard to every charge, of course, and the only exceptional treatment, I suppose, with regard to Counts 7 and 9, whether it has to be specific intent, apparently, as distinct from the general lawfulness. There will be nothing particularly extraordinary about that charge on "wilfully".

MR. FEITELL: You are going to charge specific intent, is that what you said, Judge?

THE COURT: I said the government's request with regard to tax counts, I believe, 7 and 9 indicates that or requests that I charge as to that statute. There must be a specific intent.

I will, of course, charge that there must be a specific intent if the government requests me to do so. But, with regard to all of the remaining counts, there must, of course, be wilfulness as an element of the offense, aside from the question of specific intent.

MR. FEITELL: So you will also charge specific intent as to the other counts?

THE COURT: 7 and 9, only where it's the law, Mr. Feitell.

MR. FEITELL: I object to 17-B in that it proceeds on the theory that these other people were

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co-conspirators, that is Hachmann --

THE COURT: You are free to argue to the jury that they weren't.

MR. FEITELL: Pardon?

THE COURT: You can argue that they weren't.

MR. FEITELL: I am continuing my objection which I raised a long time ago that they are victims, if anything.

THE COURT: I need to consider any of the material on conspiracy, well, not 18 and 19 I will certainly charge in substance.

I must say most of this I will charge in substance, but I am using my own language which I will use time and time again.

I will use 21, to find the objectives of the alleged conspiracy.

MR. FEITELL: I object to 21, and this is a neat point, I am going to raise. I think it has to be shown that there may be separate conspiracies here because who did Hachmann conspire with. He conspired with a different cast in different years. I am not sure that they are all or should be part of one continuing conspiracy. We have possibly three different conspiracies here.

THE COURT: If you want me to give a

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2 charge on separate conspiracies I will.

3 It used to be presented to a Judge as if
4 that were the end of the case, it had to be all tried
5 over again. The Court of Appeals has made it logically
6 and sensibly clear.

Do you want to put the question to the
jury that if they find more than one conspiracy --

MR. FEITELL: I will withdraw the applica-
tion. I would like to back up, because you say you
are going to do something in substance.

Let's take 20, request on the last page.

What is being called for here is a circum-
stantial evidence charge. If we are going to have one
in this case, it should be much better than this. I
don't think we should have one at all. This isn't a
circumstantial evidence case.

THE COURT: I see nothing different about
this case than any other case insofar as the charge of
conspiracy is concerned except for the purpose of defining
the alleged conspiracies or the objectives of it.

I am going to give the charge that I normally
give on conspiracy which in substance is close to the
government's, but not quite as verbose.

MR. FEITELL: Request 22, the time period.

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2 Particularly with respect to the time period of the
3 conspiracy.

4 I think what happened here with this
5 proposal is that it overlooks the fact that the conspiracy,
6 insofar as it's chargeable against the defendant, that
7 he would be criminally responsible, is a five year
8 conspiracy.

9 This has nothing to do with going beyond
10 the five year period and bringing in proof which would
11 tend to establish the existence of the conspiracy during
12 the five year period.

13 MR. WING: What do you mean the five year
14 period? Why is it just a five year period?

15 MR. FEITELL: Because he can't charge you
16 with conspiracy since 1968

17 MR. WING: You certainly can. If you
18 have one act in furtherance of that conspiracy, --

19 THE COURT: I agree with you that the same
20 principle is involved here, but I have already ruled on
21 that. You are on the record as far as the Court of
22 Appeals is concerned, if you ever go there.

23 With regard to the first sentence, that
24 merely states what the indictment states. It doesn't say
25 anything about the Statute of Limitations or anything else.

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This is a stock charge which, as you know, simply tells the jury that they don't have to find that the conspiracy actually commenced or lasted from the beginning date until the end date as long as it took place during those periods; during that period.

MR. FEITELL: I am generally opposed, as I am in No. 30, to all of these --

THE COURT: Where were we now?

MR. FEITELL: The burden of proof of statutes. It turns the Court into a civics course.

MR. WING: I think it's an appropriate thing for a jury to hear.

THE COURT: Sometimes I do and sometimes I don't.

MR. FEITELL: I think it's more of a speech for good government than anything else. It's not really an objective discussion of the law.

THE COURT: I will consider whether to do that. I have some question in my mind. Besides which I think the jury knows it's important to file your taxes on time, tell the truth, none other.

MR. FEITELL: This Request 39, I don't think anything that assumes that I am not disputing anything in this case and there appears to be no dispute that

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THE COURT: Will you show it to me?

(Discussion held off the record)

MR. FEITELL: Then I would like to talk about election -- are you going to put the 186 counts to the jury along with the racketeering counts?

MR. WING: Why shouldn't every count be put?

THE COURT: If I was convinced that I had discretion as to what to do here, I might consider that. But, my general impression from the recent decisions of the Court of Appeals is that the Court, unless the matters are dropped prior to the end of the trial at least, either by concession or some ruling, doesn't have much discretion about --

MR. FEITELL: I say the counts are duplicitous. I say the racketeering count and the conspiracy count, while arguably separate and possibly could be submitted to the jury, that when you get to the substantive counts, the 186 counts, that there should be an election of counts by the -- at least by the Court, perhaps, before giving it to the jury and then certainly by the jury. They couldn't come back with a verdict on all counts because it would be duplicitous.

THE COURT: Why can't you? There are many

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an indictment which contains an accusation against the defendant of violating more than one statute predicated on the same facts which is not duplicitous.

MR. FEITELL: I am saying --

THE COURT: They are close, I agree. I think it's a waste of time and resources to charge so many things and put us all to this trouble and put the questions to the jury. I don't feel that the Court has very much discretion in the matter.

If you can bring them to my attention of an authority where the Court of Appeals says it's okay to force the government to choose, I will do so. We are faced with this all the time with stock fraud and mail fraud.

MR. FEITELL: Lawyers don't raise it. I am raising this.

THE COURT: No, lawyers do raise it.

MR. FEITELL: I don't think the jury should be invited to find guilt in one count when it's already covered in another count.

THE COURT: I don't think it's a question whether the jury should be invited to. I think it's a question of whether it's a waste of time, confusing something else. Of course, if the penalty were to

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be increased as a result of that, I think it would be unconscionable, but you know that's not going to happen.

So, I am going to just play it straight. Certainly on the labor charges I have no thought of not submitting both. I have thought of submitting both at one time and then separating the others.

MR. FEITELL: I think my point even relates to the tax counts. Those are duplicitous. I shall raise that as well.

THE COURT: Where is your request?

The rule to which you refer is Section 803(7) specifies, as I understand it, I will read it literally:

"The following are not excluded by the hearsay rule, even though the declarant is available as a witness. Seven: Absence of entry in records kept in accordance with the provisions of Paragraph 6" which we will assume have been met here, "evidence that a matter is not included in the memoranda, reports, records or data compilations in any form, kept in accordance with the provisions of Paragraph 6 to prove the non-occurrence or non-existence of the matter if the matter was of a kind of which memorandum, report, record or data compilation is regularly made and preserved, unless the sources of information or other circumstances indicate the lack of

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2 MR. WING: May it please the Court,
3 counsel for the defense, ladies and gentlemen of the jury:

4 There are a lot of different ways of stealing,
5 there are a lot of different ways of lining your pockets,
6 and Fred Field's shakedown of this company for \$124,000
7 is a perfect example of how, if you are very clever and
8 very corrupt and have a lot of power, if you sit at the
9 top of one of the most powerful unions in this country,
10 you can inflict more damage by far than a common thief
11 with burglar's tools.

12 This is a shakedown case.

13 In opening, Mr. Feitell objected to the use
14 of that word as inflammatory.

15 There is an old Chinese proverb that says
16 one of the first steps to wisdom is learning how to call
17 things by the right name.

18 If this isn't a shakedown case, ladies and
19 gentlemen, what is it?

20 Was this a banana company's charity for some
21 overpaid union official?

22 You know from the tax returns that Mr. Field
23 was making \$66,000 from this union. This is not a case
24 of a crime committed because someone was in hard circum-
25 stances, had some pressing need. This crime was committed

1 gtjw

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2 for the very basic garden variety motive of greed.

3 Now, this has not been a long case and it
4 has not been complicated, but that doesn't mean it is
5 not an important case. It is important, of course, to
6 the defense, and it is important to the government.

7 This kind of shakedown by a corrupt union
8 official you may find is the kind of thing that breeds
9 immorality in the business world that you read about
10 every day.

11 You know one thing for sure because it has
12 been clear from the start; this was not a situation where
13 a company was going out and bribing someone to get some-
14 thing that they couldn't otherwise have, because it was
15 undisputed from the opening day that bananas would get
16 unloaded in the south during strikes. I told you that in
17 my opening; Mr. Hachmann told that to you; and Mr. Feitell
18 very kindly put on a number of witnesses to stress the
19 point.

20 That was the fact. And so this money was
21 not paid to get something the company couldn't otherwise
22 get. This money was taken, extorted by this man, Fred
23 Field, and it was a lot of money.

24 Now, Mr. Feitell, during the course of the
25 trial, made a lot of the word slush fund. You may find

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2 that it is people like Fred Field who are responsible
3 for causing slush funds.

4 In the old days you may have heard of
5 situations where merchants had to pay protection money
6 so they wouldn't get their store windows broken. What
7 Mr. Field got was protection money, only it was not small
8 change, it was \$124,000 over a number of years.

9 Perhaps this case is even more important
10 for another reason. We are dealing here with a very high
11 union official of a very large union, 100,000 men or more.
12 And the conduct that we have proved in this courtroom
13 demonstrates a blatant and clear abuse of trust, a man
14 taking gross advantage of his office to line his own
15 pockets.

16 What does that do to the ideals of unionism?
17 What does that do to an employer --

18 MR. FEITELL: I will object to this.

19 THE COURT: Mr. Wing, I think you should
20 finish your introduction.

21 MR. WING: Very well, your Honor.

22 -- who is bargaining with someone if he
23 thinks that the man he is bargaining with or one of the
24 men he is bargaining with is a crook? How does that
25 promote fair and honest dealing between two parties?

1 gtjw

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2 . Because, of course, this was done in 1971 and, again,
3 in 1974.

4 No, ladies and gentlemen, that was not
5 proved at all, although that's what Mr. Feitell told you
6 he would prove.

7 And, of course, as the Judge has said,
8 and he was so right, what lawyers say isn't evidence;
9 what I say isn't evidence.

10 Now, Mr. Feitell did call a number of
11 witness.

12 Did they, ladies and gentlemen, tell you
13 anything about the basic issue in this case?

14 We all know the basic issue in the case:
15 Did Mr. Field get all this money?

16 Did any of those people that were up there
17 on the stand testify about that? Did they tell you
18 anything in all of the day and a half that you listened
19 to them about that?

20 Did one of those witnesses get up on the
21 stand and say on October 8, 1971 or on October 21, 1974
22 or on any other day when Hachmann said he was paying
23 Field, did any of those witnesses says, "No, no, Field
24 was with me in Houston or Wilmington or someplace else,
25 Hachmann't with Hachmann"?

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There isn't a man or woman in this world who could come into the courtroom and take the stand and tell you that they were with Fred Field when Hachmann said he was paying him.

MR. FEITELL: I will object to this.

THE COURT: Overruled.

MR. WING: And the reason you didn't see them there was because they couldn't say that, because what Hachmann told you was the fact.

Now, you don't have to be an expert in bananas or anything else to decide this case; all you have to use is your common sense, the same common sense you use in deciding any problem that you have in your everyday life, business, personal.

You have seen people, you judge them, you have heard evidence, and you decide whether people are telling you the truth.

Now, you saw a lot of Mr. Hachmann. He was on the stand for a long time. He exposed himself to cross examination for, I think, seven hours, and you learned a lot about that man. I will bet that many of you think you kind of know that man a little bit.

You knew that he was a family man. You learned that he was kind of proud that he resented some

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2 Why would they be coming in here and telling
3 me a lie about this, if that's what's going on?

4 What does Hachmann have against Fred Field
5 that, when he is compelled to testify by an order of
6 immunity, that he comes in here and makes up this crazy
7 story? What has he got against him?

8 There was no proof that he had anything
9 against him.

10 The reason that Mr. Feitell told you about
11 that defense, the grand scheme, that Eli Black terror
12 scheme, the reason that we have that defense in the case,
13 ladies and gentlemen, is because there is no intelligible
14 way to explain why back in 1971 or back in 1968, years
15 before any of us thought of any of us being right
16 here, why at that time Hachmann was telling people that
17 Field was leaning on him for money. And so that you
18 may find that that has to have happened, and so Mr.
19 Feitell has to give you an explanation as to why, and
20 that's why we have that defense in this case.

21 Now, there are two facts about this case,
22 two pieces of evidence that make a simple case much
23 easier for you: One of them is the Hilton Hotel
24 robbery. Think about it for a minute.

25 Hachmann told you in detail what you remember

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of it, others remember other parts. Hopefully between all twelve you will have a composite picture of what happened. But let me just go over the facts very briefly to refresh you as to what the testimony was concerning these payments.

Mr. Hachmann told you in the beginning that he got into this business in 1968, that sometime during that fall, when an ILA strike was going to be called, that he met with Field and he didn't know the date, he couldn't be sure, and he told you that many times in response to many questions.

The strike was supposed to start the 1st of October. There was a Taft-Hartley case so it didn't actually start until December 20th or 21st.

He told you that sometime either right before the strike was supposed to start or right before December 20th he had a chat with Field. Field invited him over for a conversation, that there was no one else there, and Field simply said he wanted \$500 per ship to unload bananas during the strike. And Hachmann told you that Field made it very clear that if that money wasn't paid, ships would not unload. That's what he said.

And he went back to Boston and he told that to his boss, Mr. Lauer. As you may find from what you know

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A F T E R N O O N S E S S I O N

2:15 P.M.

(In the robing room - counsel present)

THE COURT: All right.

MR. FEITELL: With respect to the first part of the government's summation, I would like to raise some objections, if I may.

Mr. Wing said, if I recall correctly, that there isn't a man or woman in the world who can testify that Field wasn't there.

MR. WING: That is not correct.

MR. FEITELL: Did I hear that right?

MR. WING: I will tell you what Wing said.

Wing said there isn't a man or a woman who can come in and tell you that they were with Fred Field.

THE COURT: I don't remember the precise words.

MR. FEITELL: It is the same thing.

THE COURT: Assuming it is the same thing, I don't propose to do anything about it.

MR. FEITELL: I object to it most strenuously. It is outside of the record.

Just to identify the point, here you have

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the prosecutor testifying.

THE COURT: I find it a form of argumentation and fair comment.

MR. FEITELL: All right.

Generally, the summation was inflammatory, particularly at points where he referred to extortion, piracy, comparing him to a burglar, that this is more insidious and this is the way a man who is entrusted to lead men in the labor field conducts himself and you can see, in effect --

THE COURT: If you would like me to make any comment to the jury that naturally you are to decide this on the basis of anything but analysis of the evidence, I will be glad to do so, but other than that, I don't know what else you would like me to do.

If you wish to express your objection on the record, it is expressed.

MR. FEITELL: Yes, yes, my strong objection to these things.

Also counsel did say that his witnesses, particularly Hachmann, hadn't seen the others and talked over any of the facts with them.

Now, there is no basis for that in the record.

Here he goes again outside the record

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testifying.

MR. WING: I respectfully submit there was testimony, because I think Mr. Feitell asked a lot of the witnesses when did you last see Hachmann, when did you last see so and so.

MR. FEITELL: I didn't ask it of every witness.

MR. WING: I don't think you asked it of everyone, but I think you asked it of many, and I think I said that.

MR. FEITELL: But the point is this, that they did admit having seen each other at a point previous in time. They could have discussed it at that time. Those bus rides with Hachmann and Lauer --

THE COURT: I would suggest that you advise the jury that you disagree entirely with Mr. Wing's analysis of that point and express to them why you do, and if they want to look at the record they can.

MR. FEITELL: That's it, Judge.

THE COURT: Okay.

MR. WING: Does your Honor propose to say anything?

THE COURT: No.

MR. WING: Okay.

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And this note here, something about Chink

SUMMATION: DEFENSE

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2 Henry, you know, you must take a look at this. He says
3 that he wrote it on 8/7/75.

4 I don't know if he did or he didn't. Who
5 will ever know? But Fred Field's name isn't on this at
6 all. And the interesting feature of it all is that
7 Mr. Lauer -- you know, there is a lot I don't know, I can
8 only operate on the basis of what I see come off the
9 stand.

10 But here at this time Lauer and Hachmann
11 are meeting each other and each is talking to the other
12 about the case. It would have been the easiest thing
13 in the world to make a note at this time of a telephone
14 call from Mr. Lauer, because Lauer had spoken -- do you
15 remember Lauer's testimony in the grand jury? He didn't
16 want to hurt Mr. Hachmann the first time he was in there
17 so he said nothing bad. Not much. He only said that
18 Hachmann gave money to Chink Henry. Right?

19 This, I suggest to you most respectfully,
20 this little note, which doesn't have Fred Field's name on
21 it and does not refer to him by name or any other way
22 and in which half the paper is ripped off, God knows
23 what was written on the top, this could have been the
24 result of a conversation between Mr. Lauer and Mr. Hachmann.

25 Lauer knew Hachmann gave Chink Henry money,

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found out Chink Henry was dead. Meltzer or somebody

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is down in Washington. Put it on Chink.

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SUMMATION: DEFENSE

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He sits on it for a long time, a cooperative fellow. Then he got a bright idea. "I will put this on Fred." It's just another nail in his coffin. But, is this proof of a payment. Put it on Chink Henry. What proof is it that Hachmann ever gave money to Fred Field?

It's not proof at all. It's speculative; it's filled with supposition; there is nothing about it at all that commends itself to you as corroborative proof that payments were made to Fred Field.

The author of the language in that has well been Mr. Lauer. I suggest to you that this senior vice-president was a pretty cagey fellow in his own right. It could have been anyone else.

I couldn't finish reading all of this. It is just too much. In the rest of this, we are dealing with witnesses who are talking about whether it's \$50 bills, \$100 bills. I tell you, you have to listen to Hachmann. He told you it was \$50 bills and these people are so sure that it was hundreds, to one or two of them they were sure that it was hundreds; it wasn't hundreds, it was fifties.

But, I say this to you:

When you are doing some dirty dealing, if you go to a bank and you know you need money to make

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2 who said he thought it was fifties in 1968, said it was
3 hundreds or fifties later on, he wasn't sure. But
4 Meltzer came on later and he was sure it was hundred
5 dollar bills. And you saw when Brangwynne went on the
6 stand how the envelope went in and out.

7 That is a phony defense. That is a smoke-
8 screen to confuse you on the facts of this case.

9 And let me say one other thing at the outset:

10 None of you are asked to strike down or chop
11 down or assassinate anybody. That's not what you are
12 here for. You are here to decide the facts of the
13 case impartially based on the evidence.

14 If anybody struck down or chopped down
15 this man, it was his own greed.

16 If anybody was an assassin to Mr. Field,
17 it was Mr. Field himself, because the proof that you
18 saw and heard showed that he took this money, that he
19 extorted this money. I mean, that's him, ladies and
20 gentlemen, that's not you.

21 Don't let Mr. Peitell make you feel
22 guilty as if somehow you are going to do something unfair
23 to somebody by calling a spade a spade.

24 You know, the Constitution of the IIA, which
25 went into evidence yesterday, lists the motto and among

SUMMATION: GOVERNMENT

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2 What did Hachmann tell you? He was down
3 in New York when all this was going on. He didn't
4 care. I think he described himself as a hired hand.
5 Hachmann was on a sufficiently low level, he wasn't a
6 big executive, and it wasn't going to affect him one
7 way or the other, and if it did it doesn't matter, he
8 could get a job.

9 Mr. Feitell tells you Hachmann went up to
10 Boston and says, "Boy, you need me, I am very important,
11 you can't get along with the ILA without me," things to
12 that effect.

13 There was no testimony to that effect.
14 There was no proof of that. It shouldn't be said to you.

15 That claim is just as much baloney any day,
16 right now, as it was when it was first uttered about a
17 week and a half ago, that claim of not liking blacks
18 and all these illusions about Jews. Baloney.

19 He quit questioning witnesses about it
20 about halfway through because he couldn't establish
21 anything.

22 He brought out that Hachmann had never
23 been asked by Field before 1968, despite all the years
24 he had been in the business.

25 Let me remind you, ladies and gentlemen,

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2 Mr. Feitell talks to you about the peculiar
3 ways in which the judgments get made and who is the
4 real villain in this case.

5 We all know, both sides have proved, that
6 bananas could get unloaded. We all know from the proof
7 in this case that this couldn't be a bribery case. This
8 has to be an extortion case.

9 In an extortion case, ladies and gentlemen,
10 who is the villain, the guy who is being forced to pay
11 out or this oak, I think he was called, who is putting
12 the arm on him for the money. That's not a hard one to
13 answer. There was no proof that any of these witnesses
14 that the government called talked to each other about the
15 facts in this case.

16 Mr. Feitell asked that of several witnesses,
17 and he was told about a conversation that Hachmann had
18 with Lauer on a bus during the grand jury investigation,
19 but there was nothing brought out there indicating any
20 discussion of the testimony given in this case.

21 I don't really think Mr. Feitell is telling
22 him or arguing to you that Hachmann didn't tell Lauer
23 back in 1971 that he had to pay Field, because, he can't
24 make that argument. Too many other people heard the
25 same thing. It had to have happened.

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asked Mr. Clemon about that, and he didn't want to commit himself that it was before that letter went out.

The labor peace, it was quite clear that what was being discussed there was an issue between two sides and they were trying to negotiate. They probably, between October of 1974 and today, have negotiated hundreds of things like that, and I am sure that there were differences of opinion, as you might be sure of that.

But, you didn't hear any testimony about United Brands' boats being stopped because of wildcats or slowdowns or anything like that, the kinds of thing that you are talking about when you are talking about labor peace. There was no proof of that anywhere.

Oh, the Chink Henry note. If this man Hachmann -- ladies and gentlemen, if you think about it long enough, this solves this case for you, these notes.

If Hachmann really wanted to put it to Field, to salt him away, to protect some secret scheme to steal, why don't we have Fred Field's name on this piece of paper? Why don't we have something in here that's extremely incriminating? Why don't we have Mrs. Hachmann getting on the stand as a partner in crime and saying, "Gee, he told me all about it. He told me

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2 the dates and I wrote it down and here's the paper."

3 Why don't we have that if that's what
4 Hachmann is really about. If you could decipher it --
5 the handwriting is hard enough, but you remember how he
6 read it to you. That doesn't tell you anything unless
7 you know what it's about. This is not going to incriminate
8 anyone unless you know what it's about.

9 "Keep Chink in mind, you know what I mean."
10 That says it all. That couldn't have taken place unless
11 this man knew that he was going to get in trouble as a
12 result of the investigation into the United Brands cash
13 fund.

14 Apparently, ladies and gentlemen, according
15 to Mr. Hachmann, he did, and that's why that phone call.

16 One other thing, I guess Mr. Feitell --
17 first of all, he talks about how it's ripped off. We
18 don't know what is on the top part.

19 Hachmann told me it was a piece of paper
20 he had by his phone. What do you suppose it said on
21 the top part of the paper, "Fred Field never had anything
22 to do with this"?

23 For Pete's sake. Forget this business
24 about how it must have been Lauer who made this call.
25 Of course, is there any proof of that. Did Mr. Lauer tell

1 you that or did Mr. Hachmann tell you that or is there
2 any proof from any witness anywhere that that happened?

3 No, that is like a lot of what Mr. Feitell
4 told you, basically, groundless. If he wanted some
5 proof, if ally believed that, if he really thought
6 that that happened, ladies and gentlemen, do you
7 remember Hachmann said after he got the call he called
8 his lawyer and told him about it. Why didn't Mr. Feitell
9 put that lawyer on the stand to explain how Hachmann
10 mentioned that Lauer had called to tell him to "Keep
11 Chink Henry in mind."

12 He told you that Meltzer didn't always
13 go for the money. That is absolutely contrary to Meltzer's
14 testimony who said he always did go for the money. He
15 said that on occasion he had a man named Powers with him
16 who was some financial officer there, but he said he
17 was the one who got the money.

18 He talked about how Hachmann was pinned to
19 the \$15,000 amount at the Hilton Hotel.

20 Hachmann's testimony precisely was I don't
21 recall. It was an amount around \$15,000. He didn't
22 recall any of the specific amounts. He remembered
23 it was large. So, it's \$13,500. Tremendous -- important.

 There were a lot of things said, there were.

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2 in Gulfport, but what he told you here, ladies and
3 gentlemen, was that when he had a problem he didn't walk
4 across the street, he didn't pick up the phone and call
5 that local. No, no, he called this man at 17 Battery
6 Place in order to get him to stop the local from working.

7 There is the proof, ladies and gentlemen,
8 of the real influence and the real power that that man
9 had in this union. It's right there and it slipped out.

10 You may not have caught it at all. If
11 somebody wants to stop a union from working, a local,
12 and it's bananas, there is Mr. Banana and that's who got
13 called, and that's who did it. He stopped him.

14 You can recall that must have been back
15 in April of 1968 when Dr. Martin Luther King got killed,
16 and that was -- there was no strike going on then or
17 anything. That's the way it was.

18 I ask you to consider all of the evidence
19 that you have heard. If you find that this defendant
20 has committed a crime, and I submit to you that the
21 evidence is overwhelming that he did, if you do not
22 convict him what man or woman can say that there is any
23 justice.

24 Thank you.

25 THE COURT: Thank you, Mr. Wing.

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2 at 10:00 o'clock.

3 (Jury leaves the courtroom)

4 (In the robing room)

5 MR. FEITELL: I want to raise some issues
6 with respect to what I think was a very, very unfair
7 rebuttal by Mr. Wing. I think he overstepped the bounds
8 and I'd just like to itemize for the record what I consider
9 to have been improper. Knowing well that Mr. Hachmann
10 had testified in 1968 that as to 1968 --

11 THE COURT: Testified in --

12 MR. FEITELL: As to 1968 that Fred
13 Field came to him and said, "Now you have had a free
14 ride in these strikes," so to speak, I think it was
15 improper and deliberately misleading to insinuate into
16 the case that in 1964 and 1965, when there was another
17 strike and Hachmann had a different superior, that Field
18 was making payments to that man because this was what
19 Mr. Wing was trying to do.

20 THE COURT: Let me make a general comment
21 here, which could probably apply to what you are going
22 to say.

23 I don't recall at this stage of the game.
24 I am tired and I am sure all of you are too, whether that
25 remark was made in 1968 with regard to earlier years or

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2 not. You both have slugged very hard today, and I think
3 you have gone close to the limits of what it's proper to
4 do, but I must say that I think in its opening statement,
5 the government was extremely circumspect and that defense
6 counsel, perhaps wisely, perhaps unwisely, went very
7 far in his explanation.

8 I find nothing improper in what Mr. Wing
9 had to say in his rebuttal. If you wish to make your
10 statement for the record, of course you should.

11 MR. FEITELL: I am just saying that he
12 alluded to another crime that wasn't charged within
13 the indictment.

14 THE COURT: I don't understand it that
15 way.

16 MR. FEITELL: He planted an idea in the
17 jurors' minds that other extortions took place.

18 THE COURT: I understood the significance
19 of that testimony to be only that, if I know what you are
20 talking about, Mr. Hachmann had not been in charge of
21 the situation until 1968, whatever else had taken place
22 before that time, and that is why Mr. Hachmann couldn't
23 testify about anything before that time.

24 MR. FEITELL: Well, to proceed to another
25 point, and here is a situation where Mr. Wing undertook

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2 to throw me into the -- what shall I say, the gap by
3 saying, if I, Feitell, really believed his argument,
4 he would have called the lawyer for Mr. Hachmann when
5 the note surfaced.

6 That -- the cases are ^{legion} ~~tenfold~~ on that.

7 When a lawyer makes an argument, you don't say what the
8 lawyer on the other side feels or believes about the
9 merit of his case. That was outrageously improper.

10 THE COURT: I am not going to make any
11 statement because I have made my statement about a
12 general proposition.

13 I think that Mr. Wing's response to your
14 presentation was what, in my opinion, was fair comment
15 on the whole situation.

16 MR. FEITELL: Then with respect to that
17 Martin Luther King episode through Wilson Evans, he
18 undertook to testify that the episode in question went
19 back to 1968 with the dipping of a flag to half-mast.
20 I don't know where he got that from.

21 THE COURT: I don't recall offhand when
22 Martin Luther King was assassinated.

23 MR. WING: April 1968.

24 THE COURT: -- but I assume that we can
25 all take notice of it as a matter of history.

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2 MR. FEITELL: He went outside the record
3 to testify because it has been a problem in the south,
4 in other years, they wouldn't let them pull the flag
5 to half-mast on the anniversary.

6 It could have been some other time. I
7 don't know why he said 1968, except it ties into this
8 case.

9 THE COURT: I would also say that I thought
10 that that aspect of it was totally peripheral, and that
11 the significance of the analysis of that evidence was
12 to show the influence that Mr. Field had with other
13 locals and how he could stop a local if he wanted to or
14 get a local to stop.

15 MR. FEITELL: That's all I have, Judge.

16 THE COURT: All right, gentlemen.

17
18 (Adjourned to September 29, 1977 at 10:00 a.m.)
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CHARGE OF THE COURT

Judge Lasker

Ladies and gentlemen of the jury:

Now that you have heard the testimony in this case and the excellent and dramatic arguments of counsel yesterday, the time has come to instruct you as to the law governing the case.

You have been chosen and sworn as jurors in this matter to try the issues presented by the allegations of the indictment and on your determination of the facts -- and I stress the words "your determination" -- to decide under the law as I will instruct you whether the government has or has not proven the charges, or any of the charges, of the indictment against Mr. Field beyond a reasonable doubt.

Let me interrupt my reading here to say that while yesterday's closing statements were not unique and were appropriate, because human elements are involved in any such proposition as this, it is important for you and me, who will collectively be deciding the case, in a sense, to realize that we must exclude passion and feelings that are inappropriate from the disposition of the case. It would be unfair either to the government or to Mr. Field to decide this case on

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2 anything but the facts.

3 Now, I will discuss the charges with you
4 in detail, of course, in a moment. Before that I want
5 to give you a few preliminary and general instructions.

6 First, you are to perform your duties as
7 jurors without bias or prejudice to or for anybody,
8 whether the government or Mr. Field.

9 The law does not permit jurors, and you
10 wouldn't want it to permit jurors, to be governed by
11 sympathy or swayed by prejudice or public opinion.

12 Second, we start with the proposition that
13 we started with at the outset of the trial, that is,
14 that the law presumes every defendant to be innocent of
15 every charge against him.

16 You will recall that when you were selected
17 as a juror I specifically asked each of you if you could
18 enter into the discharge of your duties presuming Mr.
19 Field to be innocent until or unless proven guilty beyond
20 a reasonable doubt after your own deliberations, and
21 each of you gave me the answer "Yes".

22 This presumption of innocence is sufficient
23 to acquit any defendant, any defendant, unless and until
24 you, as jurors, are unanimously satisfied beyond a reason-
25 able doubt of his guilt on the particular charge in

1 gtjw 7

2 question from all of the evidence that has been presented.

3 The burden or responsibility is on the
4 government to prove a defendant guilty beyond a reasonable
5 doubt. I will advise you later in the charge what the
6 elements of the offense are.

7 Third, I want to remind you of what I
8 mentioned at the outset of the trial, and that is that
9 the existence of an indictment does not constitute
10 evidence against Mr. Field but is merely a method of
11 bringing a charge against him.

12 The indictment, by the way, which I will
13 discuss in detail, contains a number of counts and each
14 of them is a separate offense which must be considered
15 separately.

16 Now, I have said and counsel have said
17 many times throughout the case, at least in their
18 summations, that the government has assumed the burden
19 of proving Mr. Field guilty beyond a reasonable doubt.
20 Let me define that important term for you at the outset.

21 A reasonable doubt is not a vague, specula-
22 tive or imaginative doubt, it is a doubt which, as the
23 phrase suggests, is based upon reason and which results
24 either from the evidence that you have seen and heard or
25 from the lack of evidence that you feel you have not

1 gtjw 8

2 seen or heard. It is a doubt which a reasonable man
3 or woman might entertain.

4 It is a doubt, and I think this is the best
5 definition, which would cause reasonable men and prudent
6 women like yourselves to hesitate to act in connection
7 with matters of importance in your own private lives.

8 Let's say you have an important decision
9 to make. How do you go about making that decision?

10 You think about everything you know about
11 it and you think about everything you would want to know
12 and have been told and you say to yourself, "Do I have
13 enough information? Do I have enough dependable informa-
14 tion so that I am ready to act?"

15 If you say, "I don't have enough," you
16 have a reasonable doubt. If you say, "I do," then you
17 may proceed.

18 A mere suspicion cannot justify conviction.
19 Suspicion is no substitute for evidence, nor is it
20 sufficient to convict if you find that the circumstances
21 merely render the guilt of a defendant probable. The law
22 does not deal in probabilities.

23 However, in saying that the government
24 must prove a defendant guilty beyond a reasonable doubt
25 if there is to be a conviction, I do not mean to say, and

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1 the law is not, that the government is required to
2 prove guilt beyond all possible doubt. Indeed, in human
3 affairs, it is hard to think of anything we can prove
4 beyond all possible doubt, with the exception of mathe-
5 matical propositions.
6

7 Nevertheless, to sum up, the proof must
8 be of such a convincing character that you would be
9 willing to rely and act on it in the most important
10 decisions of your own affairs.

11 The evidence in this case, as you have been
12 told a number of times, consists of the testimony of
13 the witnesses, the exhibits which have been received in
14 evidence and the facts which have been stipulated or
15 agreed among counsel.

16 You have to decide the case based solely
17 on the evidence, but in your consideration of the evidence
18 you are not limited to what I might call the bald state-
19 ments of witnesses. By using the word "bald" I don't
20 mean to suggest anything about the character of the
21 testimony, but I mean that you are entitled to and you
22 are obliged to think beyond the mere words that are
23 uttered. Indeed, ladies and gentlemen, in this case,
24 as in many, there is no doubt that the outcome of the
25 case depends substantially, if not entirely, on your

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determination of what witnesses you believe and the extent to which you believe them.

Now, in deciding the many questions before you, it is your job to determine the credibility, that is, the believability of the witnesses who have testified here. How do you go about that?

Well, there is nothing that lawyers can teach you that your own experience wouldn't inform you about all together, and the only reason that I go into it is that as somebody who deals with the subject day in and day out over a period of years I have observed things which may be helpful to you.

Perhaps the best answer is to say that you determine the truthfulness or accuracy or weight to be given to the witness' testimony in the same way that you determine that question in your own personal life.

We are all constantly called upon from day to day to determine how much confidence we place in the statements that people make to us. The truthfulness or dependability of a witness, as that of any other person, can be determined by his demeanor or look, his relationship to the case and to the parties, the possibility of his being biased or partial or of his not being biased or partial, the stake which he may have in the outcome

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2 of the case, the reasonableness or unreasonableness of
3 his statements, the strength or weakness of his recol-
4 lection and the extent to which what he has said has
5 either been corroborated or contradicted by testimony of
6 other witnesses or by other evidence.

7 Of course, the witness' testimony may be
8 impeached by his own prior inconsistent statements,
9 unless there is some explanation for the inconsistency.

10 In ordinary life, when you need to determine
11 the truthfulness of a person you ask yourselves, don't
12 you, as you do here, did he impress me? Did his version
13 seem straightforward and candid or not? Did he or she
14 seem to be trying to hide some of the facts or did he
15 or she not? Did he or she have any motive to testify
16 falsely or no motive?

17 The ultimate question for you to determine
18 and to decide in passing on the credibility of a
19 witness is whether you believe that he or she told the
20 truth.

21 It is for the jurors and the jurors alone
22 to determine that question, and in making these suggestions,
23 I have given you only guidelines and I am not attempting
24 to decide that question for you, nor would it be proper
25 for me to do so.

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2 A few other rules.

3 If you find that any witness, in your
4 opinion, has wilfully testified falsely as to any
5 material, that is, any significant or important matter,
6 you may reject the entire testimony of that witness or
7 you may accept such portion of it as you believe and
8 reject the rest.

9 A few rules of evidence apply particularly
10 to a case of this kind.

11 In the prosecution of crimes, the govern-
12 ment is often called upon to use witnesses who are
13 alleged co-conspirators or participants in the offense
14 itself. Experience has shown that such witnesses
15 sometimes may be motivated to place the blame of the
16 offense on others.

17 Accordingly, a co-conspirator's testimony
18 should be carefully scrutinized and checked with the
19 facts which you find to exist in the case and against
20 the evidence which may corroborate it and then you
21 should give the testimony of such persons such
22 value or weight as you deem proper in the circumstances.

23 Of course, after you scrutinize the testi-
24 mony of such a person, you should give it, as I have
25 said, such weight as you consider proper, and what I want

1 gtjw 13

2 to say is that I am not suggesting that such witnesses
3 can't testify truthfully because anyone can testify
4 truthfully, but only that you should scrutinize the
5 testimony of such persons before you determine what
6 weight you wish to give it.

7 It is, of course, proper for you to consider
8 the interest that a witness has in the outcome of a case.
9 That is true whether such a person be a government witness
10 or a defense witness.

11 As to all the comments I have made with
12 regard to the credibility of witnesses, I mean for you
13 to understand that I am only making suggestions to you
14 and that it is up to you as to how you wish to consider
15 those witnesses' testimony and what weight to give to it.

16 Ladies and gentlemen, at the outset of this
17 trial I advised you that, pleading not guilty, Mr. Field
18 had denied all the allegations of the indictment and that
19 it was up to the prosecution, if it could, to prove him
20 guilty, and that Mr. Field is not required to disprove
21 anything.

22 Under our Constitution, a defendant has
23 the right to testify or not as he chooses, and the fact
24 that he does not testify may not be considered by you as
25 any evidence of guilt or any admission on the part of

1 qtjw 14

2 Mr. Field, nor may you draw any inference that he is
3 guilty of the charges against him here.

4 Now, this is not just an artificial rule.
5 If you were accused of a crime, you would feel that
6 there was no reason for you to be called upon to prove
7 yourself innocent. However thoroughly you would be
8 convinced of your own innocence and knew it, you would
9 believe it was the government's job to prove you guilty,
10 if it could, and not your job to prove yourself innocent.

11 Ladies and gentlemen, as I have said, your
12 determination in this case must be based upon the evidence.
13 There are two types of evidence of which we normally
14 speak. I am sure you have heard them referred to often.
15 One is called direct evidence. That is the evidence of
16 an eye or ear witness. "I have heard it" such a witness
17 would say, "I have seen it".

18 The other is indirect and is generally
19 called circumstantial evidence. Circumstantial evidence
20 is defined as the proof of a chain of events or circum-
21 stances which point to the existence or non-existence of
22 facts as to which there was no eye or ear witness.

23 The law makes no distinction as to the
24 importance or weight of circumstantial as opposed to
25 direct evidence, it requires only that you, the jury,

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2 find the facts in accordance with the evidence in the
3 case, both direct and circumstantial, beyond a reasonable
4 doubt, of course.

5 Members of the jury, both Mr. Wing and Mr.
6 Feitell have from time to time during the trial objected
7 to the introduction of evidence and addressed arguments
8 to the bench.

9 It is the duty of an attorney to make such
10 objections when he believes that the other side is
11 proposing to put in evidence or ask questions about
12 something that is not properly admissible.

13 I want you to understand that when I
14 have sustained an objection to a question or when I have
15 overruled an objection, that does not indicate any attitude
16 of mine as to how this case should be decided. What it
17 means, and the only thing it means, is that if I have
18 sustained an objection or told you to disregard informa-
19 tion you are to disregard the question or the answer,
20 as the case may be, and where I have ruled against a
21 question not try to figure out what a witness might have
22 answered if he had been allowed to do so.

23 Ladies and gentlemen, now that I have instructed
24 you as to the manner in which you should consider the
25 evidence and since you heard long summaries of the

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respective contentions of counsel yesterday, I turn to the substance of the charges in the indictment against Mr. Field.

The indictment before you, which you will have in the jury room to look at if you wish, is in ten counts, but there are several clusters of counts:

Count 1 charges violation of the so-called anti-racketeering statute.

Let me say, ladies and gentlemen, the word "racketeering" has social overtones in our society and I want you to understand that the use of that term, which happens to have been used by Congress, should not be regarded as having anything to do with the guilt or innocence of the defendant.

If you were sitting on a jury in which the law was called an anti-murder law, you would not assume the defendant was a murder because he was being tried under the anti-murder law; the question is solely whether the defendant or rather whether the government has proved the charges of the respective counts against Mr. Field beyond a reasonable doubt and nothing else, so don't be put off by titles.

Counts 2 through 5 charge violations of the labor management relations act.

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Count 6 charges a conspiracy to violate the first two laws that I have just discussed or referred to.

Counts 7 through 10 charge violations of the tax statutes.

I will discuss each of these groups with you one by one.

Let us start with Count 1, of course.

Count 1 charges violation of Section 1962(c) of Title 18 of the United States Code.

All of these sections of the United States Code that I will refer to are laws passed by Congress.

The one in question here provides, in pertinent part, as follows, and I am now reading from the law passed by Congress:

"It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect interstate or foreign commerce, to conduct or participate, directly or indirectly, in the course of such enterprise's affairs through a pattern of racketeering activity."

Now, the so-called racketeering activity referred to in the statute includes any act which is indictable under a provision of the National Labor

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Relations Act, and that law, in turn, makes it unlawful for a union official to demand or receive anything of value from an employer, and it is the statute upon which Counts 2 through 5 are based.

The term "pattern of racketeering activity" is defined by the law as follows:

"At least two acts of racketeering activity, one of which occurred after October 15, 1970 and the last of which occurred within ten years after the commission of a prior act of racketeering activity."

Ladies and gentlemen, if you find that confusing, don't give up, because I find it confusing, too. However, I do believe that in the remainder of my instructions to you about Count 1, I can illuminate for you so you will be able to understand it.

First let me say that in enacting the law with which we are dealing here, Congress found that infiltration into legitimate enterprises was accomplished by what it called a pattern of unlawful activity over a period of time and, thus, Congress made it a separate offense to commit certain unlawful conduct on more than one occasion in a pattern over a period of ten years.

Among the kinds of unlawful conduct Congress found susceptible to racketeering activity was the demand

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and receipt of money by labor union officials from companies who employ members of the official's union. That conduct, as I have said, is unlawful under the National Labor Relations Act which Congress enacted some years before.

So, putting all this together, the law is that in order to find Mr. Field guilty of the crime charged in Count 1 of the indictment, you must find that the government has proven beyond a reasonable doubt all of the so-called following essential elements.

Let me say, ladies and gentlemen, that in order to assist you in deciding whether the government has proven its case against Mr. Field beyond a reasonable doubt as to these various charges, I will describe to you as to each cluster of charges the elements that you must find, the factors on which you must make a finding and make a breakdown of those factors.

In the case of Count 1, I am now going to tell you what those factors or elements are, and you must find that the government has proven all of these beyond a reasonable doubt in order to convict Mr. Field.

First, that Mr. Field demanded or received or accepted or agreed to receive or accept two of the payments referred to in Count 1.

1
2 It turns out that there are seventeen
3 payments referred to in Count 1.

4 Second, that the payments which you find
5 he demanded, received or agreed to receive or accept
6 occurred within ten years of each other, and that one of
7 such payments was demanded or received after December 10, ✓
8 1971.

9 Third, that the payments were connected
10 with each other by some common scheme or motive so as
11 to constitute a pattern and were not merely a series of
12 disconnected acts.

13 Fourth, that the payments arose in the
14 course of Field's employment with the International
15 Longshoremen's Association, that is, the ILA.

16 And, finally, that the ILA was engaged
17 in or that its activities affected the interstate or
18 foreign commerce of the United States.

19 Don't give up. I am going to go through
20 each one of these elements separately so you will be
21 able to figure them out and understand them.

22 With respect to the first element, you must
23 find beyond a reasonable doubt that Mr. Field committed
24 at least two of the acts with which he is charged in
25 Count 1, that is, that he demanded or received at least

two of the payments referred to there.

Those payments, by the way, which you will find on page 2 of the indictment, are charged seven occasions or payments between the period September 1971 through December 13, 1971 totaling about \$48,500, seven payments made between the period September 1968 through March 1969 totaling about \$41,000 and three payments made between the period October 1974 through November of 1974 totaling \$35,000.

Of those payments, to satisfy the first element of the first count, you need to find that Mr. Field demanded, received or accepted money on two of the occasions.

In sum, with respect to the first element, in order to convict Mr. Field, you must find that he demanded or received at least one of the payments referred to in the indictment before December 1, 1971 and at least one other payment alleged in the indictment.

MR. WING: Your Honor, I think maybe you misspoke with respect to saying that you have to find that one of the payments was before. I don't think that is accurate.

THE COURT: It may not be, but it is one of the requests of the government.

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2 I think you are right, Mr. Wing. I think
3 that it is correct to say that if you find one of the
4 payments occurred before December 1, 1971, you must
5 find that at least one other payment occurred after that
6 date.

7 Am I correct in that regard?

8 MR. WING: I don't think so. I think you
9 can find one either before or after, but you have to
10 find one after that date.

11 MR. FEITELL: Judge, can we iron this out
12 in chambers?

13 THE COURT: I think we should.

14 Will you wait just a moment, please.
15 It is too important to cause any further confusion.

16 (In the robing room - counsel present)

17 THE COURT: Let me look at your request.
18 I may have modified this incorrectly.

19 MR. WING: I think what you told them
20 was that they had to find that at least one of the payments
21 was before December 1st -- you were saying 1st, it
22 should have been the 10th, but I think that statement
23 that they had to find one of the payments was before is
24 inaccurate. I think they don't have to find --

25 THE COURT: After.

1323

MR. WING: They have to find one was

MR. WING: That's right.

MR. LEVINE: They could find two of the

THE COURT: I see, they could find two

MR. WING: Yes, or one before and one

THE COURT: I know, but they could find

MR. FEITELL: But if they find two before --

THE COURT: What I said the second time

If they find that one of these occurred

If both occurred before, it is no good.

MR. FEITELL: Do you think we should be

popping up like this?

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2 MR. WING: I thought that was very
3 important.

4 THE COURT: No, I think that was important.
5 Otherwise not, of course.

6 MR. WING: Normally --

7 THE COURT: This particular statute is
8 a monster and I will be finished with this in a moment.

9 (In open court)

10 THE COURT: Ladies and gentlemen, I
11 think I did make a mistake. In any event, I am certain
12 it was confusing, so I will make a correct statement
13 at the present time and please forget what I have
14 said on this subject up until now.

15 In order to satisfy the first element
16 of the first count, it is necessary that you find that
17 Mr. Field demanded, received or accepted at least
18 two payments.

19 Now, those two payments may both be after
20 December 10, 1971 or one of them may be before December
21 10, 1971 and the other after December 10, 1971. But
22 if you should find that Mr. Field received or agreed to
23 receive or demanded two payments before December 10,
24 1971, that would not be sufficient to find him guilty
25 under this charge.

1
2 I repeat, it would be sufficient if you
3 found two such payments to be received or agreed to and
4 so on after December 10, 1971, or one before and one
5 after, but not two before December 10, 1971.

6 I believe everyone agrees on that.

7 Let me now go on.

8 As to the next element, if you find the
9 requisite two payments were demanded or received within
10 the time period I have just specified, you must also
11 find beyond a reasonable doubt that the payments were
12 in furtherance of the same goal or served the same
13 purpose or were part of the same scheme and were not
14 simply a series of disconnected acts.

15 Now, the significance of this is, as I
16 pointed out to you, this statute is leveled against a
17 pattern of behavior and not isolated acts.

18 As to the next element, you must find
19 that Mr. Field's acts were committed in the course of
20 his employment in the International Longshoremen's
21 Association. If you do not find that they were committed
22 in the course of that employment, you could not find
23 him guilty under this charge.

24 Finally, with respect to the last element,
25 that is, whether the ILA's activities were engaged in

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1 interstate commerce, if you believe the evidence which
2 has been presented that a substantial number of the
3 bananas unloaded by the union employees were brought
4 into the ports of the United States from other countries
5 and were sold throughout the United States once they were
6 unloaded by the longshoremen, you may find this element
7 to have been established.
8

9 That completes my charge to you as to
10 Count 1. I am now going to discuss Counts 2 through 5.

11 Counts 2 through 5 of the indictment
12 charge separate violations, and they relate to the National
13 Labor Relations Act. They are also based on the alleged
14 receipt of sums of cash by Mr. Field from the employer,
15 United Brands or United Fruit Company. I will call it
16 United Brands only through this charge.

17 Each of these counts charges a separate
18 offense and each must be considered separately.

19 Now, the National Labor Relations Act
20 provides, in substance, that it shall be unlawful for
21 any person who is a representative of employees who are
22 employed in an industry affecting commerce to request,
23 demand, receive or accept or agree to receive or accept
24 any payment or other thing of value from any employer or
25 any person who acts as a labor relations expert, advisor

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2 or consultant to an employer or who acts in the interests
3 of an employer.

4 It is the claim of the government that Mr.
5 Field was a representative of employees employed in an
6 industry affecting commerce and that he received money
7 from either the United Brands Company or Mr. Hachmann,
8 who was acting in the interests of the United Brands
9 Company.

10 This law, the National Labor Relations
11 Act, outlaws, with stated exceptions not relevant here,
12 all requests and acceptance of things of value. Its
13 purpose is to put a stop to practices that might impair
14 the impartiality of union representatives.

15 In order to convict Mr. Field as to any
16 of the charges in Counts 2 through 5, you must find
17 beyond a reasonable doubt as to that particular count:

18 First, that on or about the date alleged,
19 Mr. Field was a representative of employees or an
20 officer of a labor organization.

21 Second, that on or about the date alleged,
22 Mr. Field requested, demanded, received or accepted or
23 agreed to receive or accept any payment, that is to say,
24 a payment for the delivery of money specified in the
25 count which you are considering.

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2 Third, that the employer who allegedly
3 paid or delivered the money to Mr. Field employed
4 individuals who were members of the union of which Mr.
5 Field was a representative or officer.

6 Fourth, that the employer was in an
7 industry affecting interstate or foreign commerce.

8 Now let me review those elements with you
9 one by one.

10 With respect to the first element, you have
11 heard testimony that Mr. Field was an officer of the ILA,
12 of Local 856 of the ILA and of the Banana Handlers
13 Council of the ILA.

14 If you believe beyond a reasonable doubt
15 that during the relevant period Mr. Field was an officer
16 of these labor union organizations, the first element
17 is satisfied.

18 Second, if you find beyond a reasonable
19 doubt that the money specified in the count that you are
20 considering was requested or demanded or received or
21 accepted or that it was agreed that it would be received
22 or accepted by Mr. Field, then you may find that this
23 element of the crime has been proven.

24 Of course, that is the very heart of the
25 case, did Mr. Field demand, receive or agreed to receive

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2 any money.

3 Yes, sir?

4 ALTERNATE JUROR NO. 2: I was -- did you
5 say demand, receive or accept?

6 THE COURT: Yes.

7 ALTERNATE JUROR NO. 2: In other words,
8 can we conclude that he might have demanded and not
9 received?

10 THE COURT: You have to be guided by
11 what you find to be the facts of the case, but I am
12 pointing out to you that the statute makes it an offense
13 to demand money as well as to receive it or accept it.
14 I am not saying what the facts here are or how you
15 should find them.

16 Do you understand?

17 ALTERNATE JUROR NO. 2: Yes, sir.

18 THE COURT: All right, to go on.

19 Third, if you believe beyond a reasonable
20 doubt the evidence offered here that United Brands and
21 United Fruit engaged in the business of importing bananas
22 in the United States and employed longshoremen workers,
23 then those companies are employers within the meaning
24 of the statute and the third element is satisfied.

25 Fourth, you must find that United Brands

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1 is an industry affecting commerce. If you believe the
2 testimony offered here that the bananas unloaded in
3 the United States were transported from other countries
4 and sold within the United States, then I charge you as
5 a matter of law that the fourth element of the crime
6 charged in Counts 2 through 5 is satisfied.
7

8 Now I have completed my discussion with
9 you of Counts 2 through 5. I now come to the last of the
10 non-tax counts, and after I have finished this part of
11 my charge we will take a brief recess.

12 The last of those counts, that is, of the
13 non-tax counts, is Count 6, the conspiracy count.

14 Count 6 charges that Mr. Field and United
15 Brands, and others, including Mr. Hachmann, Mr. Lauer,
16 Mr. McAuley, Mr. Meltzer and Mr. Taylor, conspired to
17 violate the labor racketeering law and the National
18 Labor Relations law.

19 I shall refer to this count as the conspiracy
20 count.

21 The statute or law passed by Congress in
22 question that covers this count reads in pertinent part
23 as follows:

24 "If two or more persons conspire together
25 to commit any offense against the United States, or to

1 defraud the United States, or any agency thereof in any
2 manner or for any purpose, and one or more of such persons
3 do any act to effect the object of the conspiracy, they
4 are guilty of a crime."

5 Ladies and gentlemen, a conspiracy to
6 commit a crime is an offense entirely separate and distinct
7 from the other so-called substantive counts of this
8 indictment. The fact, however, that a conspiracy is
9 a separate offense from the substantive counts does not
10 prevent you from considering proof of actual violation,
11 if you find any, as evidence that a conspiracy existed.

12 Let me now define the term "conspiracy"
13 for you.

14 A conspiracy is an agreement between two
15 or more people to violate the law.

16 Ladies and gentlemen, I am often concerned
17 that judges charges to juries are too complicated and
18 that we overdo them. To try to simplify, let me repeat
19 that a conspiracy is nothing more or less than an agree-
20 ment between two or more people to violate the law.

21 In this case the government contends that
22 the purpose of the conspiracy was to violate the anti-
23 racketeering and National Labor Relations Act.

24 In order to find the defendant, Mr. Field,
25

1 guilty of the conspiracy charged in the indictment, you
2 must find in this case that one of the two violations of
3 statutes that I have just described to you, or both,
4 were objectives of the conspiracy, that is, that there
5 was a conspiracy between Mr. Field and the people named,
6 the names I just mentioned, to violate one of those two
7 laws, the anti-racketeering or the National Labor Relations
8 law.
9

10 Before you can find Mr. Field guilty under
11 the conspiracy charge, you must find that the government
12 has proven beyond a reasonable doubt all of the following
13 elements:

14 First, you must find the existence of the
15 conspiracy charge which I just described.

16 Obviously, you can't find Mr. Field or anyone
17 else guilty of conspiring unless you find that the con-
18 spiracy which is charged in the indictment actually existed.

19 Second, you must find that Mr. Field knowingly
20 and wilfully joined the conspiracy.

21 And, third, you must find that at least
22 one of the alleged co-conspirators committed at least
23 one of the so-called overt acts set forth in the indict-
24 ment and which I will tell you more about in a moment.

25 Now let us talk about the first element,

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the existence of the conspiracy.

As I have told you, a conspiracy is an agreement of two or more people to violate the law. It does not matter whether the defendant or his co-conspirators ever accomplished what they wanted by their plan, although the government claims here that the conspiracy, in fact, did succeed. But a conspiracy need not succeed to be successful. It is the very agreement itself to violate the law, together with the commission of at least one overt or physical act, that creates the crime.

To establish that a conspiracy existed, the government is not required to show that two or more people sat around a table and entered into a solemn pact to violate the law. It would, of course, be pretty exceptional if you could get such evidence.

You may find that the existence of a conspiracy has been established if, from proof of all the relevant facts and circumstances, you find beyond a reasonable doubt that at least two of the alleged co-conspirators came to a common agreement to carry out the criminal acts charged in the indictment. No particular language need be proven to indicate an agreement to a conspiracy. When people, in fact, undertake to enter

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1 into a criminal conspiracy, much is often left to the
2 unexpressed understanding.
3

4 You must first determine, therefore,
5 whether or not the proof establishes that the conspiracy
6 charged in the indictment actually came into existence.
7 It is not necessary, however, that you find that all of
8 the co-conspirators alleged in the indictment joined in
9 the conspiracy, but obviously you must find that at least
10 two people did or you can't have a conspiracy.

11 In deciding this first element, you should
12 consider all of the evidence which has been submitted
13 with respect to conduct, acts and declarations of each
14 alleged conspirator and you may make such inferences
15 as may be reasonably drawn therefrom.

16 Of course, proof that the conspiracy
17 actually has been accomplished may be very persuasive
18 evidence that it existed.

19 If, upon consideration of the evidence,
20 you find beyond a reasonable doubt that the minds of at
21 least two of the alleged co-conspirators met in an under-
22 standing way to violate the law, then the proof of the
23 existence of the conspiracy is complete.

24 If you conclude that the conspiracy charged
25 in the indictment existed, you must next determine whether

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1
2 Mr. Field participated in the conspiracy with knowledge
3 of its unlawful purpose and in furtherance of its unlawful
4 objectives.

5 To determine membership, you must find
6 beyond a reasonable doubt that Mr. Field joined the
7 conspiracy knowingly and participated in it intentionally,
8 that is, that he was aware of the purpose and objective
9 of the conspiracy and he entered it with the intention
10 to violate the law.

11 This determination of whether he became a member
12 of the conspiracy must be based on the evidence as to
13 Mr. Field's actions alone and not those of anyone else.

14 Now, to have the requisite knowledge, a
15 defendant need not have known the full extent of the
16 conspiracy and all of its activities. Every member of
17 a conspiracy or, rather, each member of a conspiracy
18 may perform separate and distinct acts at different
19 times and in different places. Some conspirators may
20 play a major role in the conspiracy while others play
21 a minor one. Accordingly, the guilt of a conspirator
22 is not governed by whether he played a great or a small
23 role in it.

24 But the question whether a person joined
25 a conspiracy wilfully and knowingly is one of intent, and

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it is a question of fact for you to decide. It concerns what was in Mr. Field's mind and the purposes which motivated his course of conduct.

Of course, medical science has not yet devised an instrument to record wilfulness or intention. Those are mental processes and often direct proof of them is not available. Accordingly, intent may be determined from the acts and the conduct of the person in question and the circumstances surrounding those acts and conduct and such reasonable inferences as may be drawn from them.

I come now to the third and last element of Count 6, and that is that an overt act to bring about the object of the conspiracy must have been actually committed by at least one of the co-conspirators after the unlawful agreement was made.

Ladies and gentlemen, an overt act is any action taken to bring about the conspiracy.

In this case, and this is often true, the overt acts listed in the indictment may not be illegal or criminal in themselves. They read as follows:

No. One: That on or about December 13, 1971, the defendant, Mr. Field, met with a representative of the United Brands Company.

Two: That on or about December 13,

1971, Mr. Field received a sum of money from a representative of the United Brands Company.

No. Three: That on or about October 8, 1974, the defendant, Mr. Field, received approximately \$10,000 from a representative of the United Brands Company.

Four: That on or about October 21, 1974, the defendant, Mr. Field, received approximately \$10,000 from a representative of the United Brands Company.

While those overt acts which charge that Mr. Field received money from somebody from the United Brands Company do charge illegal acts, the one which merely relates to a meeting does not. But while having a meeting with someone is not a crime, if you have a meeting with someone in furtherance of the conspiracy, then it becomes an overt act in furtherance of the conspiracy and does become illegal.

Let me say that it is not necessary for the government to prove that each member of the conspiracy committed or participated in a particular overt act, since the act of one conspirator done in furtherance of the conspiracy becomes the act of all. But in this case, of course, the overt acts specified here all refer

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to Mr. Field.

Ladies and gentlemen, the period of time charged in the indictment runs from about January 1, 1968 to December 13, 1976, the date of the filing of this indictment.

It isn't necessary for the government to prove that the conspiracy started on January 1, 1968 and ended December 13, 1976, it is sufficient if you find that, in fact, a conspiracy was formed and that it existed for some substantial time within the period set forth in the indictment and that at least one overt act was committed during that period.

To sum up, in order to prevail against Mr. Field under the conspiracy count, the government must establish beyond a reasonable doubt the existence, first, of an unlawful agreement as charged in the indictment; second, that Mr. Field knowingly and wilfully became a member of that conspiracy; and, third, that at least one overt action was taken in furtherance of the conspiracy by one of the alleged conspirators.

If the government does present to you evidence beyond a reasonable doubt of all three of those elements, your verdict on Count 6 would be guilty.

If the government fails, your verdict on

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2 that count would be not guilty.

3 Ladies and gentlemen, I have come to the
4 end of that part of my charge that deals with the so-
5 called non-tax counts.

6 I would like to meet briefly with counsel
7 in the robing room to see whether they feel it needs
8 clarification or amendment in any way and we will return
9 at that time and after that have a recess.

10 Will you please wait until we do return.

11 (In the robing room)

12 MR. FEITEL: May I be heard, Judge?

13 THE COURT: Surely.

14 MR. FEITELL: I will take it from the
15 top. Bear with me.

16 You did not define what a co-conspirator
17 is.

18 THE COURT: No, I did not.

19 MR. FEITELL: I am requesting a charge on
20 that.

21 THE COURT: When I say I did not, let me
22 say this:

23 I did indicate that the conspiracy is an
24 agreement between two persons to violate the law. It
25 seems to me perfectly obvious that a co-conspirator is

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one of the people who agrees to violate the law.

If you want me to say that, I will say that.
I don't know what else can be said.

MR. FEITELL: I raise this because I don't think you included all the names of the alleged co-conspirators. I think you excluded certain names and you mentioned certain names.

THE COURT: I mentioned the ones that happened to be in the government's request to charge. I had assumed that they were all of them.

MR. WING: Who was left out?

MR. FEITELL: Anybody who --

THE COURT: They will have the indictment anyway which names them.

MR. FEITELL: No, it doesn't.

MR. WING: The indictment doesn't name them.

MR. FEITELL: Taylor, Meltzer --

THE COURT: I will tell you.

MR. FEITELL: Taylor, Meltzer, Hachmann, United Fruit Company, United Brands Company.

THE COURT: I didn't mention the companies, I don't think.

MR. WING: You mentioned the United Brands

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2 Company.

3 MR. FEITELL: Not in connection with
4 who the co-conspirators were.

5 MR. WING: Yes, he did.

6 THE COURT: Just a moment. I will tell
7 you instead of guessing.

8 Mr. Hachmann, Mr. Lauer, Mr. McAuley, Mr.
9 Meltzer and Mr. Taylor.

10 Yes, I did mention the company, too.

11 To recapitulate, Mr. Field, United Brands,
12 Mr. Hachmann, Mr. Lauer, Mr. McAuley, Mr. Meltzer,
13 Mr. Taylor.

14 MR. FEITELL: All right.

15 The only other request that I would make
16 is that at the very end of the charge you told the jury
17 that the parameters are from 1968 through 12/13/76.

18 THE COURT: Yes.

19 MR. FEITELL: But the government was
20 under no burden to establish the existence of the
21 conspiracy on those dates, that if the jury could conclude
22 that the conspiracy existed at any time, at any time
23 between those dates, that would be sufficient.

24 THE COURT: I didn't say at any time.

25 MR. FEITELL: No?

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THE COURT: I will be precise.

MR. FEITELL: Within the time.

THE COURT: I said it is sufficient if you find that, in fact, a conspiracy was formed and that it existed for some substantial time within the period set forth.

MR. FEITELL: What would happen, Judge, if the conspiracy existed from 1968 through 1970, would that be a conspiracy that could be chargeable to the defendant?

THE COURT: You are referring to the post-December --

MR. FEITELL: It has to be within the Statute of Limitations.

THE COURT: Yes, I think you are right and, indeed, the government's request --

MR. WING: I think he is right, there has to be an act in furtherance of the conspiracy within the last five years.

THE COURT: You are right. I will add that.

It has to have been -- what I left out were words that you request, and that is at least one overt act was committed between December 10, 1971 and

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2 December 13, 1976, not because of the period alleged in
3 the indictment, but because of the effect of the statute.

4 MR. FEITELL: That is something else.

5 What I am saying is if we didn't have a
6 conspiracy operating within the Statute of Limitations,
7 then we don't have a charge that they could find against
8 the defendant.

9 They have to find that the conspiracy
10 existed within the Statute of Limitations, and you have
11 given them leeway to find that the conspiracy terminated
12 before 1971.

13 You said within --

14 THE COURT: What is your relief? What
15 do you suggest?

16 MR. FEITELL: Twofold:

17 First, that if they should conclude that
18 the conspiracy did not take place or did not exist after --
19 what would it be? -- December of 1971, that any
20 conspiratorial activity before that could not be chargeable
21 to the defendant unless they were to conclude that the
22 conspiracy went on after that date.

23 MR. WING: I think that would be improper
24 and inaccurate.

25 I think the problem is cured if your Honor

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just reads the second sentence there that is in the charge we requested, because obviously if an overt act is committed in that period the conspiracy continued.

THE COURT: You are talking about if at least one overt act was committed between December 10, 1971 and December 6, 1976?

MR. WING: Yes.

MR. FEITELL: But he would have to be a member of the conspiracy during that period of time.

MR. WING: Field was a member.

THE COURT: Yes.

The overt acts are all Mr. Field's acts.

I will make that addition.

MR. WING: We have another request, your Honor.

We have one request that you charge Request No. 26 to the extent -- well, in full, because this is a case where there is no proof that the defendant Field knew all of the people whom you didn't list as co-conspirators.

MR. FEITELL: You said that. You covered that.

THE COURT: I didn't talk about knowledge, but I talked about something pretty close to it. I don't

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know that it needs to be stressed.

Here is what I did say:

To have the requisite knowledge, a defendant need not have known the full extent of the conspiracy and all of its activities, which implies he does not know all the conspirators.

Every member of the conspiracy or, rather, each member of the conspiracy may perform separate and distinct acts at different times and at different places.

I think that is sufficient to cover the point, because if I were to say he does not need to cover everybody it would look like I was pushing it.

MR. FEITELL: That's right.

MR. WING: Very well.

THE COURT: The mere fact that I have let it go to the jury makes it perfectly clear --

MR. FEITELL: Could I also make a request?

I would like to have the exhibits out of the view of the jury while you are charging.

THE COURT: No, I will not rule on that. I will say this, I just don't send exhibits in wholesale to the jury.

MR. FEITELL: They are out on counsel's

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2 desk, or some of them, and I don't think that is -- that
3 is unseemly.

4 MR. WING: I will stick them in their
5 folders if you don't want the jury to see the evidence.

6 THE COURT: All right.

7 (In open court)

8 THE COURT: Ladies and gentlemen, there
9 is just one correction that I want to make and it has to
10 do with the last statement that I made.

11 I told you that the indictment specifies
12 that the conspiracy began January 1, 1968 and runs to
13 December 13, 1976, and that is correct.

14 I also said that it is not necessary for
15 the government to prove the conspiracy started and ended
16 on those specific dates and that, too, is correct.

17 But what I should have said instead of what
18 I did say is, that it is sufficient if you find that a
19 conspiracy was formed and existed for some substantial
20 time within that period and that at least one overt act
21 was committed between December 10, 1971 and December 13,
22 1976.

23 Boiled down, what that means is that as
24 long as there was a conspiracy, that is, that you find
25 that there was one, for some substantial period during

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the period specified in the indictment and that one of the overt acts occurred after December 10, 1971, that will satisfy the requirements of that element of Count 6.

I am sure that you are ready for a brief recess, as I am, so we will take a morning recess at this time and I will complete my charge after that. Actually, I have given you the bulk of it already.

MR. FEITLL: Your Honor, would you instruct the jury during this recess not to discuss the charge or the facts or to begin deliberations?

THE COURT: Yes. I am sure you wouldn't begin deliberations because you wouldn't have enough time for it, but just try to relax. We will be back within our usual period.

(Recess)

(In the robing room - counsel present)

THE COURT: There is, I think, one unnecessary burden created by the structure of the indictment here, and that is the most complicated count is the first one.

I think I am going to recommend to the jury that they commence their deliberations by going to Count 2, which I think is the simplest count in the indictment, simplest to determine, because it really is just whether payments were made or received or not, and then going either to Count 1 or Count 3 as they choose and, of course, it is entirely up to them.

I wanted to tell you that I was going to make that suggestion to them so that you could make any comment you wish on the record.

MR. FEITELL: I object to it, because I think it suggests to the jury that the case is strongest for the government on those counts.

THE COURT: I will be glad to say --

MR. WING: I join in Mr. Feitell's objection, although not for the same reason. I think it would be best if your Honor didn't say anything about directing them to any particular count.

THE COURT: Because it appears suggestive,

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2 or why?

3 MR. WING: I guess I think that it might
4 give an inference that there is something wrong with
5 Count 1.

6 Juries often start on counts other
7 than Count 1.

8 THE COURT: Supposing I do it this way:
9 Supposing I say that there are a lot of
10 questions in this indictment and I recommend to them
11 that they start with the one that they feel they are
12 capable of solving in the first instance.

13 MR. WING: Judge, I will tell you why I
14 really would oppose this --

15 THE COURT: If both the government and
16 defendant do, I am not going to do it.

17 MR. FEITELL: You are asking me how I
18 feel about a general suggestion that they determine
19 which way they want to proceed?

20 I am not against that. I would say it
21 is up to them how they wish to proceed --

22 THE COURT: Of course it is, but the
23 question is whether to make that statement so that they
24 know they can.

25 MR. FEITELL: I changed my mind. I don't

1 want anything to be said with them. Just let them take
2 the indictment and let them do what they want.
3

4 MR. WING: I am with Mr. Feitell on this.

5 Frankly, Judge, although there are a lot
6 of counts, they have to find the facts --

7 THE COURT: So long as they understand
8 that's all they need to decide with regard to Count 1.
9 Believe me, that is a very, very confusing count, because
10 they have to find not only that he got the money -- of
11 course, if they agreed he got all the money, that is it.

12 MR. WING: It is really an all or nothing
13 case. The defense was all or nothing, the government
14 was all or nothing.

15 THE COURT: Let us try it that way. If
16 they gag or get stuck --

17 MR. WING: Try it that way.

18 THE COURT: I will try it without comment.

19 MR. FEITELL: . . There is an open ruling on
20 this case with respect to the four tax counts.

21 THE COURT: That is correct.

22 I have considered the proposition put by
23 defense counsel, and while I will say that it is not
24 perfectly obvious that the government's position is
25 correct, I believe that the government's position is

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2 correct and I believe that Mr. Field's activities as
3 testified to by his accountant, namely, his visiting the
4 accountant's place of business and approving the last
5 draft of the return before it was signed and possibly
6 having signed it, but that is unknown, in the Southern
7 District of New York is sufficient to grant jurisdiction
8 under -- which statute?

9 MR. FEITELL: 7206, Subdivision (i).

10 THE COURT: And venue will lie here.

11 MR. FEITELL: I am not waiving my objection
12 on the other statute.

13 THE COURT: I reserve decision on 7206.

14 MR. FEITELL: There is one matter open.
15 Way back when I made a motion to adjourn this case, your
16 Honor suggested that exhibits not be marked at that time.
17 You heard full argument.

18 I still have the exhibits. They happen to
19 be sitting on a shelf in my office, and I haven't been
20 there in so many days.

21 When and if I have to, I would like to have
22 them brought in just to be marked. That's all that had
23 to be done.

24 We have the newspaper clipping and the tape
25 recording and there may be one other item that I am thinking

1 about, I just can't remember it. I had three things.
2 I certainly won't go outside of what the record will
3 reveal during the course of argument.
4

5 MR. WING: With respect to exhibits,
6 may we have leave to substitute copies for the originals
7 that are presently marked, presuming that Mr. Feitell
8 has the opportunity to examine the copies?

9 THE COURT: If he is satisfied, I am
10 satisfied.

11 MR. FEITELL: At what point in time?

12 MR. WING: After the trial is over.

13 MR. FEITELL: Oh, after the trial is
14 over, I don't object to that, as long as if there is a
15 conviction here I want access to the original exhibits
16 so we can prepare an appeal, and I would want to have
17 an opportunity to examine anything that you are going
18 to substitute, that's all.

19 MR. WING: Right.

20 THE COURT: One other thing.

21 You never made a motion at the close of the
22 government's case and I will nunc pro tunc regard you
23 as having made such a motion and it having been denied.

24 MR. FEITELL: Thank you very much. Of
25 course, I renew each and every application which I made

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2 during the entire trial and each and every motion.

3 THE COURT: So far as I know, I make
4 the same rulings on all of them.

5 (Recess)

6 (In open court - jury present)

7 THE COURT: I am talking now about the
8 four tax counts at the end of the indictment. They also
9 break down into two groups.

10 Counts 7 through 10, the whole bunch,
11 charge that Mr. Field violated the federal income tax
12 laws in connection with the payments referred to in the
13 earlier counts, that is, the payments allegedly made to
14 Mr. Field from monies of United Brands.

15 Counts 7 and 9 charge that Mr. Field
16 unlawfully, wilfully and knowingly attempted to evade
17 federal income taxes due from him and his wife for the
18 years 1971 and 1974.

19 Counts 8 and 10 charge that Mr. Field
20 unlawfully, wilfully and knowingly, under penalties of
21 perjury, signed his personal tax returns for the years
22 1971 and 1974, the same years, knowing that such returns
23 were not correct in every material respect.

24 To clear up any confusion you may have,
25 although there are four counts, they deal with only two

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2 tax years, and they allege two different offenses with
3 regard to the same tax return for each such year.

4 Let me treat these separately for you.

5 Let us start with Counts 7 and 9.

6 They charge Mr. Field with violating Title
7 26, United States Code, Section 7201, and that statute
8 says, in pertinent part:

9 "Any person who wilfully attempts in any
10 manner to evade or defeat any tax imposed by this title,
11 or the payment thereof, is guilty of a crime."

12 I am sure that comes as no great surprise
13 to you. The layman knows to wilfully evade paying these
14 taxes is a crime.

15 In order to find Mr. Field guilty of the
16 charges made in Counts 7 and 9, you must find the govern-
17 ment has proved beyond a reasonable doubt the following
18 three elements:

19 First, that a substantial amount of federal
20 income tax was due and owing from Mr. Field and his wife
21 for the calendar year in question.

22 Second, that Mr. Field made an attempt to
23 evade or defeat the tax.

24 And, third, that he did so knowingly and
25 wilfully.

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2 With respect to the first element of the
3 offense charged in Counts 7 and 9, the government must
4 prove beyond a reasonable doubt that Mr. Field had taxable
5 income for that year which he failed to report on his
6 return and had he reported such income there would have
7 been a substantial tax due and owing the United States.

8 In connection with those two counts, that
9 is 7 and 9, the indictment charges that Mr. Field failed
10 to report on his income tax returns for the years 1971
11 and 1974 the monies he allegedly got from United Brands.

12 The government, however, is not required
13 to prove Mr. Field's alleged unreported income for any
14 one year to a mathematical certainty, nor need the govern-
15 ment prove that all the monies were received by Mr. Field.
16 It is sufficient if the proof establishes to your
17 satisfaction beyond a reasonable doubt that Mr. Field
18 evaded a substantial part of his tax liability.

19 The second element of the offense in Counts
20 7 and 9 which you must find that the government has
21 proved beyond a reasonable doubt before you can find Mr.
22 Field guilty is that he attempted to evade or defeat the
23 tax due in the year in question.

24 Counts 7 and 9 allege that Mr. Field did
25 so by filing a false income tax return or by causing

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2 such a tax return to be filed on behalf of himself and
3 his wife.

4 An attempt to evade taxes is made when a
5 false return is knowingly filed.

6 In order for the government to prove that
7 a defendant filed a false or fraudulent tax return, the
8 government must prove the defendant knew that he had
9 income in the years in question which was taxable and
10 which the law required him to report. It must also
11 be proven that the defendant attempted to evade the tax
12 on the unreported income by purposely failing to report
13 all of the income which he knew he had during the year
14 and which he knew it was his duty to report on the
15 return for that year.

16 The third and final element with regard to
17 these Counts 7 and 9 which you must find in order to
18 find Mr. Field guilty of the offense is that his attempt
19 to evade taxes, if you find there was such an attempt,
20 was wilful.

21 If you find that Mr. Field understated his
22 income but that the government has not proved beyond a
23 reasonable doubt that he did so with the intention of
24 evading taxes, you would, of course, acquit him.

25 The government must establish beyond a

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reasonable doubt on each count that in the year in question Mr. Field acted with a specific intent of concealing the true taxes which he knew were due.

A good faith misunderstanding by a defendant as to his liability for taxes would, of course, not constitute an attempt to defeat taxes.

Wilfulness is not established by showing errors of law, mistakes of fact or bad judgment. A defendant acts in good faith in making his tax returns if he sincerely feels that they truly reflect his income for the years in question, and if this is the case, a defendant has not acted wilfully and is not guilty. So the government must prove more than mere negligence, stupidity or carelessness.

In this connection, however, a person may not shut his eyes to obvious facts and say he does not know of their existence. As to things that are out in the open and obvious within his view, he cannot put on blinders and be heard to say, "I have no knowledge of those facts."

Wilful intent may be inferred from conduct such as covering up sources of income, handling of normal transactions in unusual and circuitous ways, providing one's accountant with false, misleading or

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totaling approximately \$48,500, and under Count 9 for the year 1974 the government relies on the three payments allegedly received by Mr. Field which total approximately \$35,000.

Now I come to Counts 8 and 10, the last ones.

As I have indicated, these counts allege or charge separate offenses. They charge Mr. Field with violating Title 26, United States Code, Section 7206(1) and that statute provides in pertinent part as follows:

"Any person who wilfully makes and subscribes any return which contains or is verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and correct as to every material matter is guilty of a crime."

In order to find Mr. Field guilty of the offenses charged in Counts 8 and 10, that is, of wilfully subscribing to a false joint tax return, you must find that the government has established beyond a reasonable doubt all of the following four elements:

First, that Mr. Field made and subscribed, that is, signed, the personal tax return for the year in question.

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2 incomplete information or any conduct the likely effect of
3 which would be to mislead or conceal the truth facts as
4 to one's income.

5 Thus, to sum up on these counts, if a
6 person knows he had income upon which taxes are due
7 but intends to conceal his tax liability from the govern-
8 ment and consciously engages in conduct designed to
9 defraud the government of the true tax, then he is not
10 acting in good faith but is acting wilfully.

11 On the other hand, if he has an erroneous
12 but nevertheless honest good faith belief that he owes
13 no taxes due in addition to the amounts he reports,
14 he cannot be guilty of the offense charged here.

15 To prove the element of tax evasion on
16 Counts 7 and 9, the government relies on the so-called
17 specific items method to show monies received by Mr.
18 Field and not reported.

19 Under this method, you should consider
20 and add together such specific income items as you find
21 Mr. Field received during the course of each year in
22 question.

23 The specific items under Count 7 for the
24 year 1971 that the government relies on, that is, alleges,
25 are the seven payments allegedly received by Mr. Field

1
2 In this case the defendant's name appears
3 in handwriting on the 1971 and 1974 returns.

4 With respect to this first element, the
5 fact that an individual's name is signed on a tax return
6 is prima facie evidence that the return was actually
7 signed by him, and you have heard Mr. Rhodes, Mr.
8 Field's accountant, identify Mr. Field's signature on the
9 return.

10 Second, the government must prove that
11 the personal tax return for the year in question contained
12 a written declaration that it was made under penalty
13 of perjury.

14 There appears to be no question in this
15 case that the 1971 and 1974 personal tax returns contained
16 such a declaration as, so far as I know, every Form
17 1040 does contain such a declaration, unless it is
18 stricken out, and it is not, as far as I know, stricken
19 out in this case.

20 If you are satisfied beyond a reasonable
21 doubt that this was the case on each return here, then
22 the second element is satisfied as to Counts 8 and 10.

23 Third, you must find that the government
24 proved that the return for the year in question was not
25 true and correct in every material manner.

Of course, the government says it was not because it didn't include the payment allegedly received.

Fourth, that in signing the tax return, Mr. Field acted wilfully, knowing at the time that the return was not true and correct as to every material matter which it contained.

For a moment I would like to turn to these last two elements.

In order to find a defendant guilty of the crime of having wilfully subscribed to a false personal tax return, you must find that as to the return in question the government proved beyond a reasonable doubt that in some material respect the return was false.

Obviously if a taxpayer left ten cents off his return, he would not be guilty of an offense. That is why the statute specifies that in order for a defendant to be guilty he must know that his return was false in a material or important respect.

In each of these counts the government alleges that the return was false in that it understated the amount of income received by the defendant.

The government need not prove that Mr. Field understated his income by any specific amount but

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2 only that the understatement was substantial.

3 If you find that there was an understatement,
4 the question of substantiality is an issue of fact which
5 you must decide and for which there are no precise guide-
6 lines. It is an issue similar to that raised by the
7 question in the tax evasion charges of substantial tax
8 due and owing, that is, what is substantial in any given
9 case can only be decided by a consideration of the
10 other circumstances peculiar to the case, including
11 obviously the income reported and the income not reported,
12 if you find there was any.

13 If you do find that in any one year there
14 was a substantial understatement of income, this would
15 constitute a material matter within the meaning of the
16 law.

17 As I told you, in order to find Mr. Field
18 guilty of the offense of wilfully subscribing to a false
19 personal return, you must find that he acted wilfully
20 and knowingly. In other words, you must find that he
21 acted deliberately, consciously and voluntarily and not
22 merely by accident or through negligence or inadvertence.

23 In addition, you must find that Mr. Field,
24 at the time he is alleged to have signed the false
25 returns, knew of the falsity.

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2 In this connection, however, I instruct
3 you that the offense with which these counts are
4 concerned involves the alleged making of false statements
5 and not the alleged attempt to evade taxes.

6 Accordingly, it is not necessary to find,
7 in considering Counts 8 and 10, that the defendant had
8 a specific intent to evade taxes, if you find that the
9 government has proved the defendant signed the returns
10 wilfully and knowingly, that is, with knowledge of the
11 falsity of the return, then that element of the offense
12 is met.

13 Finally, a few brief words.

14 A taxpayer, of course, may delegate the
15 responsibility for the preparation of his returns to a
16 person such as an accountant, for example, Mr. Rhodes
17 in this case, whom he has reason to believe is competent
18 to handle such matters. The mistakes of such a person,
19 if you find that there are any, are not attributable to
20 the taxpayer.

21 However, the taxpayer is required to give
22 or make available to the preparer of his tax return
23 accurate information with respect to his income for the
24 tax years in question. Moreover, a taxpayer defendant
25 cannot blame or shift responsibility to the person he

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2 retains if the taxpayer deliberately withholds vital
3 information from that person.

4 If a defendant taxpayer provided his
5 tax preparer with full information as to his income and
6 the defendant then adopted, signed and filed the returns
7 prepared for him without having reason to believe that
8 they were not accurate, you must find the defendant not
9 guilty.

10 If, however, you find beyond a reasonable
11 doubt that Mr. Field, coming down to the present case,
12 wilfully and knowingly did not provide full and complete
13 information to his tax preparer, Mr. Rhodes, or that he
14 knew the returns prepared by Mr. Rhodes were not correct
15 and substantially understated his tax liability, then
16 you are not required to acquit Mr. Field simply because
17 he did not personally prepare his tax returns.

18 Ladies and gentlemen, some reference may
19 have been made either in the opening or closing statements
20 of counsel to the question of penalties for the violations
21 charged against Mr. Field. Such matters are irrelevant
22 to the question of your verdict.

23 Under the oath you took when you became
24 a juror in this case, you committed yourself, and it is
25 the law, that you must decide the case upon the evidence

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2 and the evidence alone.

3 Ladies and gentlemen, I have come almost
4 to the end of my instructions, but, in a sense, the
5 most important part is what I am about to say, that is,
6 with regard to your role as jurors, because it is for you
7 and you alone to decide whether Mr. Field is guilty of
8 any of the charges against him.

9 I know you will try these issues in accord-
10 ance with the serious oath that you took as jurors when
11 you promised that you would well and truly try the
12 issues joined in this case and, as you may remember,
13 based solely on the evidence which has been put before
14 you in this courtroom and at this trial and my instructions,
15 render a true and just verdict.

16 I like that phrase, will well and truly try
17 the issues joined in this case. It goes back a thousand
18 years or so, ladies and gentlemen, and its old-fashioned
19 flavor should mean something to you and remind you of the
20 hundreds and thousands of juries who have performed this
21 function before you and remind you that you must a true
22 verdict render based upon the evidence and only the
23 evidence that you have heard in this court.

24 In order for you to reach a verdict of
25 guilty or not guilty on any count as to Mr. Field, your

1 verdict must, of course, be unanimous, that is, everybody
2
3 must agree on that particular verdict.

4 But in spite of the requirement of unanimity,
5 each of you must decide each count as to Mr. Field
6 individually in accordance with your own conscience,
7 but only after deliberation with your fellow jurors to
8 determine whether you believe a just verdict is being
9 reached.

10 You should not hesitate to change your mind
11 if you become convinced that your original view of the
12 case did not accord with the facts or the law or whatever
13 it is. But on the other hand, you should not change
14 your view just for the purpose of reaching a verdict
15 as a matter of convenience.

16 I really have no reason to believe that
17 you will not be able to reach a unanimous verdict one
18 way or the other as to the matters put before you.

19 To sum up, if you find that there is a
20 reasonable doubt that the law has been violated by Mr.
21 Field on any count, you must not hesitate for any
22 reason to acquit him on that count.

23 On the other hand, if you find that the
24 law has been violated, that is, that the government
25 has proven that charge beyond a reasonable doubt, you

1 must not hesitate because of sympathy or other reason
2
3 to render a verdict of guilty on that count.

4 Nothing I have said in these instructions,
5 and I stress this, is intended to indicate any view
6 of mine towards how any of the issues here should be
7 decided.

8 Ladies and gentlemen, I have prepared and
9 I will give to the forelady what I call a verdict list
10 which simply sets forth the numbers of the counts and as
11 to each one contains the lines not guilty or guilty and
12 when you decide on that count you can enter it on this
13 verdict list and go on.

14 By saying that I am not suggesting any
15 particular order in which the jury should take up the
16 counts in the indictment, that is entirely up to them.

17 Ladies and gentlemen, according to custom,
18 Juror No. 1 normally acts as the foreman or forewoman
19 of the jury in this court, and I am going to ask Mrs.
20 Scott to do so in this case.

21 That does not mean that she will have any
22 authority that the rest of you do not have, but simply
23 that she will assist in seeing that your discussions and
24 deliberations are orderly and that communications to the
25 Court are properly made.

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2 You have the right at any time, ladies
3 and gentlemen, to ask for any or all of the exhibits.

4 You have the right to have any of the
5 testimony read back to you.

6 You have the right to put any question you
7 want to the Court.

8 If you do wish to have any testimony read,
9 Mrs. Scott, or any exhibit, it will be very helpful
10 if you will be as specific as possible about the material
11 that you are interested in so that we can be assisted
12 in locating the material in advance.

13 The way you get in touch with the Court
14 will be to give a note to the Marshal, who will be stand-
15 ing outside the door of the jury room. I am neither
16 encouraging or discouraging your asking for anything,
17 but certainly you have the right to have anything you
18 wish.

19 It is not my practice, ladies and gentlemen,
20 to send in all the exhibits at one time, plunk them down
21 on the jury room table and leave them there. I think that
22 might be confusing. However, if you prefer when you
23 start your deliberations, you may have all the exhibits
24 before you. All you have to do is to write a note
25 asking for them. If, on the other hand, you want a

1 particular exhibit at any time, just ask for that.

2 I will also say, because sometimes a jury
3 asks, that the Judge's charge will not be sent to you.
4 I hope it has been clear. I know it has been long and
5 complicated. Even in my own experience it has been long
6 and complicated. But if it has not been clear, then
7 I am afraid it would be less than clear if I sent it
8 into you and you all tried by yourselves to figure out
9 what it meant.
10

11 If you do have any questions about what
12 I have said in my charge on what the law is, simply
13 write me a note stating your question, come out and tell
14 me what your question is or specify your question in
15 the note and it will be answered.

16 Ladies and gentlemen, I am sure you will
17 be happy to hear that I have come to the very end of
18 my charge.

19 Again I want to consult with counsel to
20 see whether they believe that this portion of it requires
21 any clarification or amendment and we will be out very
22 quickly and you can commence your deliberations.
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1 gtjw 70

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2 (In the robing room - counsel present)

3 MR. FEITELL: May I see the verdict sheet?

4 THE COURT: Yes. I have put not guilty
5 first.6 MR. FEITELL: Judge, I would like to do
7 something. I am not trying to change the law, I know
8 what the law is.9 I would like the jury not to believe that
10 they have only two alternatives, guilty or not guilty.
11 They don't have to agree at all. I think that they
12 should be instructed as to that effect, that they are
13 not obliged to reach a verdict. They are not obliged
14 by law to be unanimous in either direction.15 THE COURT: I think that is an important
16 point, but I decline to charge the jury that they are
17 not obliged, although I believe that they are not
18 literally obliged.

19 MR. FEITELL: Also the verdict --

20 THE COURT: Let me state for the record,
21 I take seriously your comment. My reason for refusing
22 to charge the jury is because it seems to me it could
23 be misconstrued as indicating the Court feels either that
24 the matter is casual or not important or that the jury
25 should not reach a verdict.

1
2 I think they are aware of the fact that
3 nobody can put a gun to their heads. Every layman,
4 it seems to me, who has thought about these matters
5 knows that there is such a thing as a hung jury.

6 MR. FEITELL: With these jurors, many of
7 them are new to service.

8 The other point is with relation to what
9 I just said, the verdict sheet carries this a step forward,
10 the limitation of alternatives, guilty or not guilty.

11 I take it your Honor overrules that objection,
12 too.

13 THE COURT: Yes.

14 MR. FEITELL: The other point is this:

15 The record will reveal that Field was
16 audited in 1974 and paid about \$500 or so as a result of
17 the settlement of the audit in connection with the 1974
18 return.

19 I am concerned whether the jury will think
20 that that flap or audit and the requirement to pay \$574
21 could be a substantial --

22 THE COURT: Do they know about it?

23 MR. FEITELL: It is in one of the sheets
24 that you prepared that he was audited and it came out --

25 MR. WING: I think you questioned Mr. Rhodes

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about it. It is inconceivable that the jury could consider that to be a violation of the tax laws under the charge by the Judge.

THE COURT: I will be perfectly glad to say that there was some adjustment made that has nothing to do with the case here.

MR. FEITELL: Yes.

MR. WING: I think you already told them that the whole thing is based on the payments.

THE COURT: I know. But I can imagine a layman might be confused.

MR. FEITELL: The problem with that is --

THE COURT: What do you want me to do, in other words?

MR. FEITELL: Too, by the way, you are advised to the effect that any audit adjustments that were made with respect to an audit of the 1974 tax return have absolutely nothing to do with this case, the amounts --

THE COURT: That is the civil part of it --

MR. FEITELL: It is not even the civil part of it.

THE COURT: What was it?

MR. FEITELL: A couple of expenses that were disallowed. It is wholly foreign to the issues in

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1 this case. The government is claiming payments. It is
2 the payments that they are claiming that were made by
3 Hachmann to Field that are the only issues that are
4 involved in Counts 7 through 10.
5

6 THE COURT: I see no harm in saying --

7 MR. WING: Very well.

8 THE COURT: -- some other items that were
9 adjusted and they have nothing to do with this case.

10 MR. FEITELL: And I would like you to tell
11 them that the amounts are small --

12 MR. WING: I object to that. If you are
13 going to say the audit is irrelevant, that is fine. If
14 you want to say the money is small -- I just as soon
15 not have any comment as to what is small and what is
16 large.

17 THE COURT: All right. I take it you have
18 nothing, Mr. Wing?

19 MR. WING: No, I do not.
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(In open court)

THE COURT: Ladies and gentlemen, just one brief comment. I was about to say minor, but nothing in this business is minor.

I was not even aware of it myself, but it is in the record somewhere. There was an adjustment of sorts to Mr. Field's 1974 return. Whatever it was -- and as I told you, I didn't know what it was and I don't know whether you did, either -- it has nothing to do with the issues before us here, it had something to do with something entirely different, so put that out of your mind.

Ladies and gentlemen, I have a sad duty. We have all gotten to be friends, and I mean to say everybody in the courtroom, and that, of course, includes the alternate jurors. They have been assiduous and attentive in their attendance here as the regular jurors and everybody else.

I commented to our clerk, who has been with me for many years and has been in the courthouse, dare I say this, even longer than I have, that this jury has been exceptionally dependable, really remarkable. With seventeen people on the jury, with some pretty bad weather during the course of the trial, at least at the

1 beginning of the trial, there literally has been no --
2 I think maybe once, and I will forget that -- only one
3 occasion on which we hadn't been able to start on time,
4 and when we haven't started on time it was either that
5 other court business has kept me busy or I was busy with
6 counsel in this case. So I want to thank all of the
7 jurors for their devoted attendance here.
8

9 I think it must be frustrating to sit in
10 a case up to this point and then not continue in the
11 deliberations, but the law does not even permit the Judge
12 to permit the alternate jurors to sit in the deliberations,
13 so I will have to excuse you now.

14 Thank you very much, ladies and gentlemen.

15 (Five alternate jurors excused)

16 (A marshal was duly sworn by the
17 clerk of the court)

18 THE COURT: As you know, ladies and
19 gentlemen, your orders have been taken for lunch to
20 eat in. I hope that is agreeable to you. It certainly
21 will save you time and energy. I will leave to you
22 whether to keep talking during your lunch or whether
23 to take a few minutes out. Anyway, that will be taken
24 care of.

25 Ladies and gentlemen, would you proceed

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2 with the marshal.

3 (At 12:15 p.m., the jury retired
4 to the jury room to deliberate upon a verdict)

5 THE COURT: Gentlemen, I am returning
6 to chambers and I will probably go to lunch in about
7 fifteen minutes and be gone until about a quarter to
8 2:00, and I will advise the clerk to advise the marshal
9 of that if there are any questions from the jury during
10 that period of time.

11 If any exhibits are asked for, I ask
12 counsel to see that they are delivered to the jury,
13 unless there is some question about the nature of the
14 inquiry from the jury itself.

15 If there are any requests on the part of
16 the jury to read any testimony, if counsel are agreed,
17 I would appreciate their going ahead and having that
18 testimony read to the jury without the necessity of my
19 being here.

20 If there are questions raised by the
21 communications from the jury, of course I will come down
22 and decide it.

23 MR. WING: Judge, if testimony is to be
24 read, I would request that your Honor be here. I think
25 that if the jurors are in the box listening to it --

1
2 THE COURT: I don't see it if it is just
3 a matter of the reporter reading back from the record.
4 I decline to do it, unless you can point out to me any
5 prejudice to the government or the defendant or any
6 authority that requires a Judge to be here.

7 Of course if there is a question amongst
8 counsel whether when something is read something else
9 has to be read, I think the Judge has to be here to
10 decide that question. But I don't see why a Judge
11 faced with the burden we have these days has to listen
12 to testimony which is just being read to the jury.

13 MR. WING: I am sympathetic to the burdens
14 on the Court, your Honor, but I just think that, one, it
15 will seem extremely peculiar to the jury that you are
16 not here and, two, so many unpredictable things happen.

17 I have seen situations where jurors, out
18 of the blue, start talking or asking questions or want to
19 know something, and if that happened with you not in the
20 courtroom, I just think it would be a problem.

21 THE COURT: I will leave the question open.
22 Let us see if it arises, No. 1.

23 No. 2, if they are asking for testimony
24 which you and Mr. Feitell agree amounts to three pages
25 or something like that, you could say that I could come

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2 easily and go easily, but, really, I have many other
3 things to do and I don't believe I will.

4 Mr. Feitell?

5 MR. FEITELL: One of the problems this
6 procedure raises, and I am divided on how I feel about
7 it, say a note comes out, who will look at the note if you
8 are not here in the first instance?

9 THE COURT: It will be read to me over the
10 telephone. That's what I do all the time.

11 THE CLERK: We do have a note.

12 It says: "We need some heat."

13 THE COURT: They want heat. I thought
14 they were going to ask for light.

15 MR. FEITELL: Judge, may I be excused to
16 go to Judge Palmieri's courtroom 506 in connection
17 with a call?

18 THE COURT: Would you mind remaining
19 until 12:30? Then I will be gone, too, shortly.

20 MR. FEITELL: Certainly.

21 endt

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USA v
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T3
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(At 12:30 p.m., a note was received

from the jury)

THE CLERK: Court Exhibit 3 is a note

from the jury which reads as follows:

"We need:

"1. The indictment.

"2. Travel expense sheet for 1971.

"3. Travel expense sheet 1974.

"4. Slip of paper referring to Chink.

"5. Petty cash log checks from Mr.

Brangwynne.

"6. Mr. Meltzer's vault record."

MR. WING: May the record reflect that

defense counsel and the government have agreed on the

exhibits being sent into the jury in response to the

note which was just received which is going to be marked

Court's Exhibit 3.

MR. FEITELL: . . This is the first note from
the jury.

(Court Exhibit 3 marked)

(At 3:00 p.m., a note was received

from the jury)

(In the robing room - counsel present)

THE COURT: The following note has been

xxx

received and has been marked Court Exhibit 4.

"Re Counts 2 through 5.

"Could he have demanded and not received but still be guilty, or does he have to demand and receive?"

Then there is an asterisk and a note written by another juror.

"Indictment reads demand, received and accept payments."

"Is the law: Demand, received (received or accept) payments? Clarify words and/or."

Quite obviously this message asks the Judge to advise the jury whether in the circumstances the jury can find the defendant guilty if it should find only beyond a reasonable doubt that the government had proved that the defendant demanded payments but not necessarily received payments. At least that's the way I construe the note.

I will advise the jury that is the way I construe the note and satisfy myself that that's what they meant before I answer.

If that is their question, it would be my view of the matter that the answer would be that the jury could find a defendant, and this defendant, guilty under Counts 2 through 5 if it were satisfied only that the

1 government had proven beyond a reasonable doubt that
2 the defendant demanded such payments even if it were not
3 satisfied that the government had proven beyond a reason-
4 able doubt that the defendant had received such payments.
5

6 I recognize that the indictment is phrased
7 in the conjunctive. It says that the accused "Knowingly
8 did request, demand, receive and accept payments, et
9 cetera.

10 However, the statute is phrased in the
11 disjunctive, and it is the statute which controls what
12 is criminal behavior.

13 The indictment is a description of what
14 the government contends that the defendant did, and the
15 government does contend that the defendant both demanded
16 and received.

17 But the law is not if a man is charged
18 with both offenses he cannot be found guilty unless it
19 is proven that he did both offenses.

20 I know that Mr. Feitell disagrees and I
21 want to give him an opportunity to make his statement
22 on the record, which he had made to me before I just
23 made my statement.

24 MR. FEITELL: I didn't go into it in
25 full. I had other points.

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2 Point 1 in my argument would be the statute
3 is to be read in the conjunctive.

4 THE COURT: When you say is to be read,
5 do you disagree that the word "or" is used in the statute?

6 MR. FEITELL: I would like to see the
7 statute again.

8 THE COURT: I don't have it with me.

9 MR. LEVINE: It is copied in the request
10 to charge.

11 MR. FEITELL: I would merely like to have
12 the syntax of the statute before me, because I think
13 there is some statutory language argument that I can
14 make.

15 THE COURT: This is going to take a long
16 time.

17 MR. FEITELL: This is a key point.

18 Can you get it?

19 MR. WING: I don't have it outside.

20 (Pause)

21 MR. WING: Judge, while we are waiting --
22 I will let Mr. Feitell make the rest of his argument.

23 MR. FEITELL: I say that that statute has
24 to be read in terms of not only the request and demand
25 but the accept and acceptance of the payments, otherwise

1 these terms are redundant and have no real force or
2 effect. They are to be read together.

3 There is a difference between receiving
4 and accepting. One may receive something without accept-
5 ing it.

6 THE COURT: Yes.

7 MR. FEITELL: Acceptance indicates state
8 of mind; reducing something to one's possession with a
9 claim of right or recognition of a passage of title,
10 something to that effect.

11 THE COURT: All of that would be true
12 if the word "or" is not used. If the word "or" isn't
13 used, I would agree with you.

14 MR. FEITELL: I would secondly state that
15 we don't have the statute --

16 THE COURT: Note for the record that we
17 will have it before I rule.

18 MR. FEITELL: There may be some rules of
19 statutory interpretation, old cases that indicate
20 that the word "or" in the statute should be read and/or.

21 THE COURT: Mr. Feitell, anything may be.

22 If I am wrong on the law, the Court of
23 Appeals is going to reverse it anyway, so we don't need
24 to go into possible errors of law.
25

2 MR. FEITELL: The point is this, we are
3 dealing with the black letter of the indictment. I say
4 that the government can't vary at this late stage of the
5 game its theory of the case, and the way this case was
6 tried, the way we went to the jury on it, this argument
7 was never made by the government.

8 All the parties to this prosecution have
9 always proceeded on the theory that we were dealing
10 with a demand and a payment and acceptance, and that's
11 the way the government's case came out.

12 Even if the statute could be read contrary
13 to the defense position, we are beyond that point in this
14 case.

15 THE COURT: Let me say this in response
16 to you.

17 I believe the last point you made, if any
18 point you made, has enough merit to discuss it.

19 The case has been put to the jury and it
20 has never been contended that Mr. Field might have asked
21 for this money but not have gotten it. The witnesses
22 have not alleged that he asked them but didn't receive
23 it.

24 I am trying to think in my mind whether the
25 defendant might have defended the proposition differently

1 if as an alternative to actual receipt and acceptance of
2 the money, which the government certainly has attempted
3 to prove, the government had also attempted to prove
4 that the defendant had perhaps only asked for the money
5 but not gotten it.
6

7 Do you want to comment on that, Mr. Wing?

8 MR. WING: Yes, your Honor.

9 Directly in response to that, the defense
10 that was put in clearly applies to both.

11 As far as I know, the indictments that are
12 filed by grand juries sitting in this district for every
13 statutory crime that I can think of track the statutory
14 language. Most of the criminal statutes we use have
15 more than one verb describing the particular crime.

16 Take a bank embezzlement, whoever embezzles,
17 purloins, misapplies --

18 THE COURT: I can't say in good conscience
19 that I think that that analogy applies at least to the
20 difference between the words "demand" on the one hand and
21 the words "receive" and "accept" on the other.

22 MR. WING: I think it does. I think if you
23 remember the statutory purpose, that which you charged
24 and that which you left out, it was clearly to stop
25 demands as well as receiving.

2 THE COURT: You are not answering my
3 question. My question isn't what the proper statutory
4 construction is. I am pretty well satisfied that the
5 statutory construction is in the disjunctive.

6 I am now discussing the next point made
7 by Mr. Feitell, which is, as I understand it, that even
8 if the statute is to be construed in the disjunctive,
9 since the government has, No. 1., charged and, No. 2,
10 clearly attempted to prove during the whole course of the
11 trial not only that the defendant demanded but that he
12 received, the government should not now be allowed or the
13 Judge should not now advise the jury that it can find the
14 defendant guilty merely on proof of demand.

15 Have I correctly stated your position?

16 MR. FEITELL: Yes. But I haven't finished
17 my argument.

18 THE COURT: I thought you had.

19 MR. FEITELL: No, I hadn't.

20 THE COURT: All right.

21 MR. FEITELL: I say you should read this
22 indictment from its four corners.

23 Turn back to Count 1. Look what it says,
24 which explains the government's theory of the case.

25 Look at page 2.

Approximate sum of money paid to. It says it right there.

THE COURT: It says it in Counts 2 through 5, also.

MR. FEITELL: That is my next point. Look at Counts 2 through 5, approximate amounts.

THE COURT: Those are the amounts they talked about.

MR. FEITELL: Right. I defended this case on this theory. I powered all of my fire into the issue of the payments, the payments.

Now, if the government had wanted to argue that a different theory should apply, why didn't they make an application to conform the pleadings to the proof?

I know why, you couldn't conform the pleading to the proof in this case. The proof only establishes the conjunctive, and received and accepted.

That being the case, this case possibly can wind up going to the jury on a theory other than was tried, and I object most strenuously to it. I don't care what some clerk has done in some office --

MR. WING: It wasn't any clerk, it was me.

THE COURT: We are not discussing that aspect of it. So far as that is concerned, the difference

1
2 in the language of the indictment and that of the
3 statute, to wit, the use of the word "and" in the indict-
4 ment and the use of the word "or" in the statute, in
5 my opinion, would not bar the Judge from instructing the
6 jury that they could, if we didn't have the history that
7 we have of this case, and that is not meant to be a
8 ruling one way or the other, but aside from the history
9 of the case, a defendant could not be convicted under an
10 indictment -- let me start again.

11 I have already earlier said that in my
12 view a defendant may be convicted under an indictment
13 that reads like this one with the use of the conjunctive
14 even though the statute reads in the disjunctive, and
15 I have explained why; because I consider the indictment
16 to be nothing but an accusation and if any portion of the
17 accusation constitutes a crime and the jury finds that
18 that defendant has actually performed that portion of the
19 accusation, he is guilty. . .

20 I am dealing with a much narrower question
21 of whether, because of the way the case has been tried,
22 it would be proper for me to advise the jury to that
23 effect.

24 MR. WING: Your Honor, I think -- you
25 really had the floor for most of the time. Let me respond.

1 THE COURT: Yes.

2 MR. WING: This case was defended on the
3 ground that this man didn't receive a penny.
4

5 We have seventeen payments in the first
6 count, but we only have to prove two. It would be absurd
7 to say that we have to prove them all because that is
8 the theory on which the case was defended.

9 THE COURT: No, that is not the question
10 the jury is asking.

11 MR. WING: I know, your Honor, but it is
12 the same thing. It is the same thing.

13 The jury could find that the man got the
14 money but didn't demand it.

15 THE COURT: Mr. Wing, I wish I could
16 agree with you that clearly because I would be all ready
17 to go in there.

18 I previously said I agree with that theory
19 when it comes to the question of variance, so-called --
20 I don't count it a variance -- between the indictment
21 and the statute.

22 We are talking about a very narrow point,
23 and that is whether the government has, in effect, said,
24 "Here's the target," and caused the defendant to shoot
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toward a target in one corner and whether I can now tell the jury that the target could be in the other corner as well.

MR. FEITELL: May I address myself to that, Judge?

MR. WING: He is asking me.

THE COURT: I am asking Mr. Wing.

MR. WING: I do not think you are saying the target is in a different corner is an appropriate or fair analogy, Judge.

This is a situation where an indictment is based on a statute.

Mr. Feitell read the statute long before he came into court, as did everybody else. That statute is in the disjunctive. In that case Mr. Feitell knew long before he came into the courtroom we could prove any one of those things and the case would go to the jury on any of those particular crimes and be presented that way.

THE COURT: I will tell you how I will dispose of it.

MR. FEITELL: May I be heard a little further?

THE COURT: I want to rule.

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2 MR. FEITELL: Do you remember the opening
3 I had to deal with here? He got up and said this was
4 extortion, that this was piracy; not an attempt, that it
5 was completed, that it was done. He summed up the same
6 way. He cast the form of the battle.

7 THE COURT: The way I am going to dispose
8 of the matter is this.

9 I recognize that there is some risk of
10 my being wrong in this ruling, but I think it is a fair
11 one and I think it is a sensible one, and it is at the
12 government's risk.

13 I take it the government is prepared for
14 me to take the risk on that point.

15 I am going to advise the jury that the
16 answer to the question about the variance between the
17 indictment and the statute -- no, I am not going to
18 talk about the indictment or the statute.

19 I am simply going to say the indictment
20 charges all of these things, but as a matter of law some-
21 body can be found guilty of merely demanding. On the
22 other hand, the government contends that in this case
23 Mr. Field was paid the money.

24 MR. WING: Your Honor, one other point.

25 The way you phrased it initially when you

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2 talked about it you phrased in terms that he could be
3 found guilty if all he did was demand.

4 I think the note asks for a response he
5 could be found guilty of any one of the terms, demand
6 or receive, because, as I say, maybe the jury is thinking
7 maybe he received it and he didn't demand it, if you
8 follow me.

9 MR. FEITELL: The Judge is trying to
10 be fair. He is trying to be solomic here. He is trying
11 to give us both a little help here, and I think I am
12 entitled to it.

13 The way you tried this case --

14 THE COURT: Mr. Wing is not disagreeing
15 with what I just said, he is saying in addition to telling
16 them that a person can be found -- rather, that it is an
17 offense to demand, it is also an offense to receive or
18 accept, any one of those things is an offense. But in
19 this case I will say to the jury that the government
20 contends that Mr. Field did receive and accept.

21 MR. FEITELL: Judge, just to close it out,
22 I appreciate that, but, naturally, for the record I am
23 going to object to it.

24 THE COURT: You haven't waived your
25 objection.

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It is a very interesting question.

(3:30 p.m. - in open court - jury present)

THE COURT: I am sorry to have held you up, but I was involved in another matter when I received your note.

I have received your note, which I have marked as Court Exhibit 4, and I will read it so we know what the question is.

"Re Counts 2 through 5.

"Could he have demanded and not received but still be guilty, or does he have to demand and receive?"

Then one of you added:

"Indictment reads demand receive and accept payments. Is the law demand, receive or accept payments? Clarify words and/or."

Before I answer the question, I may say, first of all, that I complement all of you on your very sharp attention to the issues before you and I wondered whether any of you had gone to law school or are planning to do so, but you have asked a very good question.

The answer to the question is that the law reads that it is an offense to demand or accept or receive.

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The indictment charges that Mr. Field demanded and accepted and received.

Now, it is legally possible to find a defendant guilty -- let me put it this way:

It is an offense, I won't say to find him guilty because there are other things, but it is an offense merely to demand. However, in this case, as you know, the government contends that it has proven beyond a reasonable doubt that Mr. Field received and accepted the money.

Have I answered your question? If not, would you raise your hand if there is anything further you would like to ask me.

Nobody is raising their hand, so I assume I have answered the question you had in your mind.

Thank you very much, ladies and gentlemen.

Will you return to your deliberations.

(At 3:35 p.m., the jury returned to the jury room to continue to deliberate upon a verdict)

MR. FEITELL: Your Honor, I consider those two questions embraced in one note from the jury to be astute questions, astute --

THE COURT: So do I.

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2 MR. FEITELL: But wholly inappropriate
3 in this case and shows frolick and detour on their think-
4 ing.

5 Here is what bothers me. I thought your
6 complimenting the jury on picking up that issue as I
7 view it as a non-issue in the case or not the issue gave
8 to it an importance and clarity that will give a momentum
9 to this jury on this particular point, which was quite
10 hard fought in chambers as to how it should be dealt with,
11 and I thought when you decided to give a little to both
12 sides that that's the way it was going to come out, but
13 what you did here, most respectfully, is I think it
14 got all turned around in favor of the government by
15 your --

16 THE COURT: I am sorry you feel that
17 way.

18 Thank you. I will see you later.

19 (4:35 p.m. - in open court - jury present)

20 THE COURT: Madam Clerk, will you please
21 call the jury roll.

22 (Jury roll called - all present)

23 THE CLERK: Madam Forelady, has the jury
24 reached a verdict on all counts as to the defendant?

25 THE FORELADY: Yes.

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THE CLERK: How do you find the defendant
on Count 1?

THE FORELADY: Guilty.

THE CLERK: On Count 2?

THE FORELADY: Guilty.

THE CLERK: On Count 3?

THE FORELADY: Guilty.

THE CLERK: On Count 4?

THE FORELADY: Guilty.

THE CLERK: On Count 5?

THE FORELADY: Guilty.

THE CLERK: On Count 6?

THE FORELADY: Guilty.

THE CLERK: On Count 7?

THE FORELADY: Guilty.

THE CLERK: On Count 8?

THE FORELADY: Guilty.

THE CLERK: On Count 9?

THE FORELADY: Guilty.

THE CLERK: On Count 10?

THE FORELADY: Guilty.

MR. FEITELL: Poll the jury, your Honor.

THE COURT: Yes, of course.

THE CLERK: Members of the jury, please

listen to your verdict as it now stands recorded.

You say you find the defendant Fred R. Field, Jr guilty on Counts 1 through 10.

(Each juror, upon being asked, "Is that your verdict, answered in the affirmative)

THE COURT: Ladies and gentlemen, I thank you very much for what you put into this case. It has not been the longest case in this courthouse by a long shot, but it has taken a great deal of time and energy.

I was very impressed, as I told you, by the promptness of your attendance on every occasion and also by the attention which it seems to me you gave to all the witnesses.

I particularly wish to express my appreciation to you for undertaking the arduous duty that you have here.

Judges are occasionally called upon to determine whether a defendant is guilty or not guilty when the defendant himself and the government waive a jury trial and I know the awesome responsibility that you have discharged in deciding this case. It is not pleasant nor agreeable. But when a jury is convinced that the government has proven its charges beyond a reasonable doubt, it is its obligation to say so.

SENTENCE

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1 lzjb

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2 THE COURT: All right, thank you, Mr. Field.

3 Mr. Field, you stand before me convicted of
4 quite a number of offenses although they all originate
5 out of the same propositions. They involved what is de-
6 scribed in the law as engaging in racketeering activity,
7 labor union official accepting illegal payments, con-
8 spiracy to engage in racketeering activity, income tax
9 evasion and false statements on income tax return.

10 If we were to be literal about the possible
11 penalties applied or applicable in such a situation, they
12 could total 45 years in prison and \$105,000 in fines.

13 I mention these things because, of course, I
14 know that we don't expect to apply maximum, but to give
15 some idea of what the elected representatives of this
16 nation, the members of Congress have considered to be
17 appropriate penalties for the offenses of which you have
18 been convicted.

19 Mr. Field, I just heard you deny receipt of any
20 such payments and if you are telling the truth, Mr. Field,
21 you have been totally, unjustly prosecuted and convicted
22 because all of this hangs together on one proposition.

23 I also sat here for a week or two, however long
24 the trial took, and I heard Mr. Hackman and I heard Mr.
25 Hackman cross examined at great length by Mr. Feitell, who

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1 lzjb

2 has, I am sure you will agree, represented you with skill
3 and devotion throughout this proceeding. The jury heard
4 Mr. Hackman, twelve of them agreed that the government
5 had proven its case beyond a reasonable doubt.

6 I think the verdict was a proper verdict in
7 the circumstances, which is not to say that I am God and
8 I know what the truth is, but I think the government did
9 prove its case beyond a reasonable doubt and I must pro-
10 ceed on that assumption in any event.

11 I have tried to bear in mind everything that
12 Mr. Feitell and you have put before me as well as every-
13 thing the government has put before me. I start out with
14 the things that are against you. The nature of the
15 offense here is ugly, in my opinion. The jury found that
16 you had received by illegal means about \$125,000 and
17 solely, really for venial and corrupt purposes. You were
18 well, well, well paid by the various unions and union
19 offices which you headed or filled. The nature of the
20 offense here involves corruption of the structure of
21 labor relations itself where employers are made to pay
22 union officials either for matters which shouldn't be
23 carried out at all or which should be carried out without
24 the payment of any money whatsoever. The payments here
25 in my opinion were clearly made under pressure from you

SENTENCE

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21

1 lzjb

2 and not voluntarily and finally, of course, it seems to
3 me, I don't think there is any question about it that
4 the payments made or the acceptance of such payments on
5 your behalf constituted a breach of duty to your own
6 members not to make money by virtue of your office.

7 I am not saying that you made your union mem-
8 bers do anything improper, although you may have, but
9 you had no right to make extra money from the office, if
10 you did.

11 And lastly, I think it is significant that you
12 have been unwilling to cooperate in any way with the
13 government in its investigation of the kinds of payments
14 being made in your industry. I understand your desire to
15 be loyal to your own fellow members, your colleagues and
16 so forth, but there is a higher loyalty that must be im-
17 posed on all of us, and that is a loyalty to society at
18 large and not just those with whom you are working.

19 I must say also that I agree with the govern-
20 ment's memorandum when it states that "The loss of faith
21 caused by abuses of positions of trust in both government
22 and the private economic sector is one of the most criti-
23 cal problems our society faces today and an isolated act
24 of violence by an outlaw mugger may be terrible to the
25 individual victim, but the well dressed, highly placed

SENTENCE

1 lzjb

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22

2 union official or corporate official actually wields a
3 far more terrible weapon against safety. His crimes are
4 only possible because his weapon is put in the criminal's
5 hand by a society that has been induced to place its
6 faith in him and is then betrayed."

7 Now in your favor, Mr. Field, is the fact that
8 you have no prior offense. That you have had a superb
9 working record since a child and I quite agree with Mr.
10 Feltell about all the good things that he says about you,
11 how hard you have worked, how well you have represented
12 people in the labor union and that there have to be
13 Fred Fields. The question here isn't whether there have
14 to be Fred Fields, there not only have to be, there
15 should be Fred Fields, but the question here is what to
16 do when someone in your capacity is convicted of the
17 offenses of which he has been convicted.

18 There have been very impressive letters that
19 I have received in your behalf from union officials. I
20 receive letters all the time and I sometimes receive many
21 more than I have received in this case. Naturally I
22 expect them to favor the person in question, but the
23 variation in language and thought that is contained in
24 the letters in your behalf is impressive. They are not
25 stock letters, so I paid attention to them.

SENTENCE

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1 lzjb

2 I am also impressed by the strong family ties
3 in your situation and by your obviously severe illness at
4 a moderately advanced age. I can only call it a moder-
5 ately advanced age, Mr. Field, because you are a year
6 younger than me and I don't like to think I am an old man.

7 I have borne all these things in mind and
8 having borne them in mind, it is adjudged that on Counts
9 1 through 10 the defendant is committed to the custody
10 of the Attorney General for a period of 36 months, but
11 on condition that the defendant be confined in a jail
12 or treatment type institution for a period of one year,
13 the execution of the remainder of the sentence of
14 imprisonment is suspended and the defendant placed on
15 probation for a period of 24 months subject to the stand-
16 ing probation order of this court. The said sentence is
17 to run concurrently and not consecutively, and the defen-
18 dant is fined the sum of \$5,000 on each count to be paid
19 within 90 days, but not to constitute a committed fine.

20 I want to make a certain number of comments
21 on that sentence but before I do, Mr. Field, I want to
22 advise you that you have a right to appeal from your
23 conviction here and you have a right to appeal on that
24 basis from the sentence just imposed. I assume that you
25 will appeal. If you don't have the funds to appeal on

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1 lzjb

2 your own behalf, I will instruct the clerk of this court
3 to file a notice of appeal on your behalf, but the finan-
4 cial statement that you submitted and the fact that you
5 have been privately represented up to now leads me to
6 assume that you will continue to be privately represented.

7 I want to say this about the sentence. The
8 sentence adds up to a one year custodial sentence to be
9 followed by two years probation and a \$50,000 fine. I
10 am very keenly aware that this sentence, which would have
11 been longer if I didn't believe that Mr. Field was a
12 sick man, can only be served if his health permits. I
13 have already informally advised Mr. Feitell that at such
14 time as surrender would be imminent I would want to have
15 a physical examination of Mr. Field conducted by court
16 appointed doctors and I will be guided by whatever they
17 have to say, but I am not insensitive to the serious
18 state of Mr. Field's health and I will not require the
19 service of a sentence if I am ever persuaded that his
20 health could be drastically affected by the requirement.
21 On the other hand, unless I am so persuaded, I feel the
22 sentence is just.

23 The \$50,000 fine is acknowledgedly a high fine.
24 It is imposed because it is considered reasonable in
25 relation to the \$125,000 which Mr. Field is accused and

SENTENCE

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1 lzjb

2 convicted of receiving but, as you know, Mr. Feitell,
3 it is possible for the defendant to move to reduce that
4 sentence if he can establish to my satisfaction by a
5 sworn statement and other documentation that it is un-
6 reasonable in relation to his financial condition.

7 I think we have covered everything there is to
8 be covered. I don't want to keep Mr. Field standing in-
9 definitely in the circumstances and he can be seated.

10 MR. FEITELL: I have an application, your
11 Honor.

12 THE COURT: Yes.

13 MR. FEITELL: We do intend to file a notice of
14 appeal and that is in preparation and I would ask in view
15 of the fact that an appeal will be had here and I expect
16 to be representing Mr. Field on that, that the Court con-
17 sider continuing the defendant on bail during the pendency
18 of his appeal.

19 THE COURT: I would ordinarily do that. I will
20 ask Mr. Wing if there is any reason why I shouldn't.

21 MR. WING: No objection to that.

22 THE COURT: Accordingly, Mr. Field's bail will
23 be continued as it has been and I think that concludes
24 our proceedings for the day.

25 (Court adjourned)

COURT OF APPEALS-SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

FRED R. FIELD, JR.,

Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF New York

ss.:

I, JAMES A. STEELE being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
112 West 136th Street, New York, New York
That on the 1st day of March 19 78 at 1 St. Andrews Plaza N.Y. N.Y.

deponent served the annexed

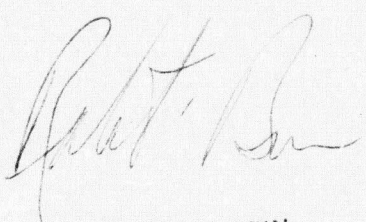
upon

Appendix

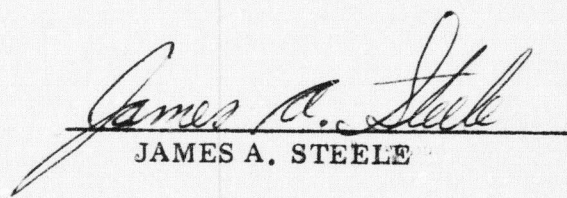
Robert Fiske, Jr.

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 1st
day of March, 19 78



ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979


JAMES A. STEELE